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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Case No. 19-34054-SGJ-11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Chapter 11
	§	
Debtor.	§	
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	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	Adversary No.: 21-03005-sgj
NEXPOINT ADVISORS, L.P., JAMES	§	
DONDERO, NANCY DONDERO, AND	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

**DEFENDANT NEXPOINT ADVISORS, L.P.’S
ANSWER TO AMENDED COMPLAINT**

Defendant NexPoint Advisors, L.P. (“NexPoint”), a defendant in the above-styled and numbered adversary proceeding (the “Adversary Proceeding”) filed by Highland Capital Management, L.P. (the “Plaintiff”), hereby files this Answer (the “Answer”) responding to the *Amended Complaint for (I) Breach of Contract and (II) Turnover of Property (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty* [Adv. Dkt. 73] (the “Amended Complaint”). Where an allegation in the Amended Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of paragraph 1 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Defendant NexPoint admits that NPA's First Amended Answer speaks for itself. To the extent paragraph 2 contradicts the First Amended Answer, it is denied.

3. Defendant NexPoint denies the allegations in paragraph 3 of the Amended Complaint.

4. Paragraph 4 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied.

5. Paragraph 5 of the Amended Complaint contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

6. Defendant NexPoint admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in paragraph 6 not expressly admitted are denied.

7. Defendant NexPoint admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in paragraph 7 not expressly admitted are denied.

8. Defendant NexPoint denies the allegations contained in paragraph 8 of the Amended Complaint. Defendant NexPoint does not consent to any trial before, or final order entered by, the Bankruptcy Court. Defendant NexPoint demands a trial by jury of all issues so triable.

9. Defendant NexPoint admits the allegations in paragraph 9 of the Amended Complaint.

THE PARTIES

10. Defendant NexPoint admits the allegations in paragraph 10 of the Amended Complaint.

11. Defendant NexPoint admits the allegations in paragraph 11 of the Amended Complaint.

12. Defendant NexPoint admits the allegations in paragraph 12 of the Amended Complaint.

13. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the Amended Complaint and therefore denies the same.

14. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the Amended Complaint and therefore denies the same.

CASE BACKGROUND

15. Defendant NexPoint admits the allegations in paragraph 15 of the Amended Complaint.

16. Defendant NexPoint admits the allegations in paragraph 16 of the Amended Complaint.

17. Defendant NexPoint admits the allegations in paragraph 17 of the Amended Complaint.

18. Defendant NexPoint admits the allegations in paragraph 18 of the Amended Complaint.

19. Defendant NexPoint admits the allegations in paragraph 19 of the Amended Complaint.

STATEMENT OF FACTS

20. Defendant NexPoint admits that it has executed at least one promissory note under which the Debtor is a payee. Any allegations in paragraph 20 not expressly admitted are denied.

21. Defendant NexPoint admits the allegations in paragraph 21 of the Amended Complaint.

22. Defendant NexPoint denies paragraph 22 of the Complaint. The document speaks for itself and the quote set forth in paragraph 22 is not verbatim.

23. Defendant NexPoint admits the allegations in paragraph 23 of the Amended Complaint.

24. Defendant NexPoint denies paragraph 24 of the Complaint. The document speaks for itself and the quote set forth in paragraph 24 is not verbatim.

25. Defendant NexPoint admits the allegations in paragraph 25 of the Amended Complaint.

26. Defendant NexPoint admits that it did not make a payment under the Note on December 31, 2020. Defendant NexPoint denies that any payment was due under the Note on December 31, 2020. To the extent not expressly admitted, paragraph 26 of the Amended Complaint is denied.

27. Defendant NexPoint admits that Exhibit 2 to the Amended Complaint (the “Demand Letter”) is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 27 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 27 of the Amended Complaint is denied.

28. Defendant NexPoint admits that it paid the Debtor \$1,406,111.92 on January 14, 2021, but denies that any payment was due on December 31, 2020 or that this was an attempt to cure a default. To the extent not expressly admitted, paragraph 28 of the Amended Complaint is denied.

29. Defendant NexPoint admits that Exhibit 3 to the Amended Complaint (the “Second Demand Letter”) is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 29 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 29 of the Amended Complaint is denied.

30. To the extent paragraph 30 of the Amended Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits paragraph 30 of the Amended Complaint.

31. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 of the Amended Complaint and therefore denies the same.

32. Defendant NexPoint denies the allegations in paragraph 32 of the Amended Complaint.

33. Defendant NexPoint admits that the Debtor filed the Original Complaint in this action on January 22, 2021, as alleged in the first sentence of paragraph 33 of the Amended

Complaint. Defendant NexPoint denies it is liable for the relief requested in the Original Complaint. To the extent not expressly admitted, paragraph 33 of the Amended Complaint is denied.

34. Defendant NexPoint admits the allegations in paragraph 34 of the Amended Complaint.

35. Defendant NexPoint admits the allegations in paragraph 35 of the Amended Complaint.

36. Defendant NexPoint admits that NexPoint's First Amended Answer speaks for itself. To the extent paragraph 36 contradicts the First Amended Answer, it is denied.

37. Defendant NexPoint admits that NexPoint's First Amended Answer speaks for itself. To the extent paragraph 37 contradicts the First Amended Answer, it is denied.

38. Paragraph 38 of the Amended Complaint asserts a legal conclusion to which no answer is required. To the extent of any factual allegation, Defendant NexPoint admits that Mr. Dondero controlled NPA and denies that he controlled the Debtor at the time of the Alleged Agreement.

39. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 of the Amended Complaint and therefore denies the same.

40. Defendant NexPoint denies the allegations in paragraph 40 of the Amended Complaint.

41. Defendant NexPoint admits that Exhibit 4 to the Amended Complaint is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 41 of the Amended Complaint asserts a legal conclusion, no response is required, and

it is denied. To the extent not expressly admitted, paragraph 41 of the Amended Complaint is denied.

42. Paragraph 42 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

43. Paragraph 43 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

**FIRST CLAIM FOR RELIEF
(against NexPoint)
(for Breach of Contract)**

44. Paragraph 44 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

45. Paragraph 45 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

46. Paragraph 46 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

47. Paragraph 47 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

48. Paragraph 48 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

**SECOND CLAIM FOR RELIEF
(against NexPoint)
(Turnover by NexPoint Pursuant to 11 U.S.C. § 542(b))**

49. Paragraph 49 of the Amended Complaint is a sentence of incorporation that does not require a response and is therefore denied. All prior responses are incorporated herein by reference.

50. Paragraph 50 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

51. Paragraph 51 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

52. Paragraph 52 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

53. Paragraph 53 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. Defendant NexPoint admits that the Plaintiff transmitted the Demand Letter and the Second Demand Letter, and those documents speak for themselves.

54. Paragraph 54 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

55. Paragraph 55 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

THIRD CLAIM FOR RELIEF
(Against NexPoint)
(Avoidance and Recovery of Actual Fraudulent Transfer under 11 U.S.C. §§ 548(a)(1)(A) and 550)

56. Paragraph 56 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

57. Paragraph 57 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

58. Paragraph 58 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

59. Paragraph 59 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

60. Paragraph 60 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

61. Paragraph 61 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

FOURTH CLAIM FOR RELIEF

(Against NexPoint)

(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. § 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))

62. Paragraph 62 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

63. Paragraph 63 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

64. Paragraph 64 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

65. Paragraph 65 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

66. Paragraph 66 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

FIFTH CLAIM FOR RELIEF

(Against Dugaboy Investment Trust and Nancy Dondero)

(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)

67. Paragraph 67 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

68. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

69. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

70. Paragraph 70 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

SIXTH CLAIM FOR RELIEF
(Against Dugaboy Investment Trust and Nancy Dondero)
(Breach of Fiduciary Duty)

71. Paragraph 71 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

72. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

73. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

74. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

SEVENTH CLAIM FOR RELIEF
(Against James Dondero and Nancy Dondero)
(Aiding and Abetting a Breach of Fiduciary Duty)

75. Paragraph 75 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

76. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

77. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

78. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

79. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

Defendant NexPoint denies that the Plaintiff is entitled to the relief requested in the prayer, including as to parts (i), (ii), (iii), (iv), (v), (vi), (vii) and (iii) [sic].

AFFIRMATIVE DEFENSES

80. Pursuant to that certain Shared Services Agreement, the Plaintiff was responsible for making payments on behalf of the Defendant under the note. Any alleged default under the note was the result of the Plaintiff's own negligence, misconduct, breach of contract, etc.

81. Delay in the performance of a contract is excused when the party who seeks to enforce the contract caused the delay. It was therefore inappropriate for the Plaintiff to accelerate the note when the brief delay in payment was the Plaintiff's own fault.

82. Furthermore, the Plaintiff has waived the right to accelerate the note and /or the Plaintiff is estopped to enforce the alleged acceleration by accepting payment after the same.

83. Furthermore, the Plaintiff's claims are barred in whole or in part because, prior to any alleged breach or acceleration, the Plaintiff agreed that it would not collect on the note upon fulfilment of certain conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Defendant Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Defendant James Dondero's control. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant NexPoint believes there may be testimony or email correspondence that discusses the

existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

84. Defendant NexPoint asserts that any fraudulent transfer claim is barred because NexPoint acted in good faith, without knowledge of any alleged avoidability, and because reasonably equivalent value was provided for any alleged transfer or obligation.

85. Defendant NexPoint asserts that any fraudulent transfer claim is barred because no transferor or transferee, or obligor or obligee, was insolvent.

86. To the extent of any avoidance, NexPoint asserts a lien under 11 U.S.C. § 548(c) to the extent that NexPoint gave value, and a similar preference lien under any applicable provision of the Texas Uniform Fraudulent Transfer Act.

JURY DEMAND

87. Defendant NexPoint demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

88. Defendant NexPoint does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant NexPoint respectfully requests that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Amended Complaint and provide Defendant NexPoint such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this 1st day of September, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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COUNSEL FOR NEXPOINT ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 1, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Davor Rukavina

Davor Rukavina

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ATTORNEYS FOR NEXPOINT ADVISORS, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03005-sgj
	§	
NEXPOINT ADVISORS, L.P., JAMES	§	
DONDERO, NANCY DONDERO, AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

**MOTION OF DEFENDANT NEXPOINT ADVISORS, L.P. TO EXTEND
EXPERT DISCLOSURE AND DISCOVERY DEADLINES**

TO THE HONORABLE STACEY G.C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COMES NOW NexPoint Advisors, L.P. (“NexPoint”), one of the defendants in the above styled and numbered Adversary Proceeding initiated by Highland Capital Management, L.P. as the plaintiff (the “Debtor”), and files this its *Motion to Extend Expert Disclosure and Discovery Deadlines* (the “Motion”), respectfully stating as follows:

I. RELIEF REQUESTED

1. By this Motion, NexPoint requests that the Court extend the deadline, in its *Order Approving Stipulation and Agreed Order Governing Discovery and Other Pre-Trial Issues* [docket no. 70] (the “Scheduling Order”), for the designation of experts and service of expert reports, through December 13, 2021, with a corresponding extension of expert discovery. Specifically, NexPoint finds it appropriate and advisable to designate a testifying expert on the standards and duties of care under the parties’ Shared Services Agreement (defined below) with respect to Highland’s role in NexPoint’s alleged failure to make a December 21, 2020 payment on the Note (defined below); specifically, that Highland was responsible for ensuring that NexPoint made this payment. This request is necessitated by recent deposition testimony of key individuals on October 19 and 21, 2021, prior to which NexPoint did not know or reasonably believe that expert testimony on the duties of care would be advisable.

II. PROCEDURAL BACKGROUND

2. The Debtor initiated this Adversary Proceeding with the filing of its original complaint against NexPoint on January 22, 2021.

3. By this Adversary Proceeding, the Debtor seeks to collect on a promissory note issued by NexPoint to the Debtor on May 31, 2017 in the original principal amount of \$30,746,812.33 (the “Note”). The Note is a 30-year note and provides for an annual payment of principal and interest. After prior payments, the Debtor asserts that \$23,071,195.03 remains due and owing on the Note.

4. NexPoint has asserted various defenses and affirmative defenses to the Debtor’s allegations and causes of action. This Motion concerns one such affirmative defense only, to the effect that the Debtor, through its employees, caused the alleged underlying default.

5. On July 28, 2021, the District Court entered an order adopting this Court's report and recommendation and ordering that the reference for this Adversary Proceeding will be withdrawn once this Court certifies this Adversary Proceeding as being trial ready. As part of the same, the District Court necessarily agreed and ordered that NexPoint has a right to a trial by jury of this Adversary Proceeding.

III. FACTS

6. This Motion is supported by the **Declaration** of Davor Rukavina, attached hereto as incorporated herein (the "**Declaration**").

7. The Debtor alleges that the Note required NexPoint to make a payment of principal and interest on December 31, 2020, and that NexPoint failed to make this payment. Thus, in January, 2021, the Debtor sent notice that the Note had been accelerated, and the Debtor demanded full and immediate payment.

8. One of NexPoint's affirmative defenses in this Adversary Proceeding concerns that certain *Amended and Restated Shared Services Agreement* (the "Shared Services Agreement") between the Debtor and NexPoint dated January 1, 2018. The Agreement was in place as of December 31, 2020, although the Debtor terminated it later, in 2021. Under the Agreement, the Debtor provided various services to NexPoint, including so-called "back office" services, including treasury, accounting, and payables services. NexPoint has alleged that, pursuant to the Shared Services Agreement, the Debtor was responsible for ensuring that NexPoint made the allegedly required December 31, 2020 payment, although such payment would be made from NexPoint's funds. Indeed, Waterhouse (defined below) testified that it was "reasonable for NexPoint to rely on the debtors' employees to inform NexPoint of an upcoming payment due on the \$30 million promissory note." See **Declaration at Exhibit C, 337**:22-338:8.

9. NexPoint asserts that the Debtor failed to do so and, therefore, caused the alleged default, which it now seeks to exploit, and that, but for the Debtor's negligence, the Note would remain in place. NexPoint has always asserted this as an affirmative defense. See **Docket No. 6**. NexPoint's defense, however, was based on its belief that the Debtor and its employees, including Waterhouse, did nothing to facilitate or ensure the payment, as opposed to a conscious decision not to make the payment.

10. On October 19, 2021, the Debtor deposed Frank Waterhouse ("Waterhouse"), as did NexPoint, in connection with this Adversary Proceeding. Waterhouse was the Debtor's chief financial officer in December, 2020, and either the treasurer or chief financial officer (either way an officer) of NexPoint in December, 2020. To be clear, Waterhouse was the Debtor's employee, although he provided services to NexPoint as well pursuant to the Shared Services Agreement. Among other things, at this deposition, Waterhouse testified that, in early December, 2020, James Dondero ("Dondero"), who at that time controlled NexPoint but did not control the Debtor, instructed Waterhouse not to cause NexPoint to pay any more funds to the Debtor, including, expressly on the Note.

11. This changed the potential facts as NexPoint understood them to be from ones where the Debtor simply failed utterly to facilitate the payment, as it has always done, to one where the Debtor intentionally, allegedly upon the instructions of Dondero, decided not to facilitate the payment. Assuming the Dondero instruction to be true, this raises the question of whether the Debtor thereafter had any affirmative duty with respect to the alleged instruction.

12. NexPoint did not know that Waterhouse would provide this testimony. NexPoint understood that Dondero instructed Waterhouse to make no further payments on the Shared Services Agreement, because Dondero believed that NexPoint had overpaid by millions of dollars

on the Shared Services Agreement. But NexPoint did not understand that Waterhouse would testify that Dondero instructed him also not to pay the Note.

13. If Dondero told Waterhouse in early December, 2020 not to pay on the Note, then the question becomes whether Waterhouse or the Debtor thereafter “put their heads in the sand” in violation of any affirmative duty or obligation they may have had regarding the matter, such as: to ask Dondero whether they correctly understood him; to ask Dondero whether he meant NexPoint and the Note; to inform Dondero of the potential consequences of a default by potentially accelerating a 30-year promissory note; or to try to dissuade him from his decision. After all, the Debtor was responsible to facilitate the payment, the Debtor had various duties under the Shared Services Agreement, and it was in the Debtor’s interest that NexPoint would default, thus creating a conflict of interest.

14. Accordingly, on October 19, 2021, when NexPoint deposed James Seery, NexPoint asked Mr. Seery about section 6.01 of the Shared Services Agreement, labeled “standard of care,” which provides that the Debtor and Waterhouse “shall discharge its duties under this Agreement with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with like aims.” Mr. Seery testified that he did not believe that this provision of the Shared Services Agreement obligated the Debtor or Waterhouse to do anything further after Dondero allegedly instructed Waterhouse not to pay on the Note.

15. At that time, NexPoint determined that it was appropriate, and would assist the finder of fact, to retain an expert on the “standard of care” provided for in the Shared Services Agreement. This is especially important because this will be a jury trial in the District Court. NexPoint did not believe that it would need to retain such an expert, and it had no reasonable grounds to suspect that it would need such an expert, prior to these depositions.

16. NexPoint moved as promptly as it could thereafter. NexPoint decided to retain an expert on October 22, 2021 and began searching for one on that day. NexPoint located a potential expert, Steven J. Pully, on October 26, 2021, and after conflicts were cleared and terms agreed to, Mr. Pully agreed to serve as NexPoint's expert on October 28, 2021. NexPoint files this motion just one day later, and less than two weeks after Waterhouse's deposition triggered the issue.

17. It goes without saying that neither Pully nor any reasonable expert can possibly review the issues, formulate an opinion, and prepare a report one day after they are retained. Among other things, Pully needs to review all underlying documents and deposition transcripts, some of which have yet to be returned by the court reporters. Accordingly, NexPoint believes that approximately six (6) weeks will be sufficient for Pully to prepare a report. NexPoint submits that the Debtor should have a period of time to then designate a potential rebuttal expert, and a period of time for expert discovery. Such a procedure would be fair for all involved and would constitute a minimal delay to what has already been a rapidly advanced case.

IV. ARGUMENT AND AUTHORITIES

18. It is appropriate for an expert to consider the issue of Waterhouse's and the Debtor's duties under the Shared Services Agreement—*i.e.*, “duties under this Agreement with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with like aims,”—as issues such as “prudent person” and “like capacity and familiar with like aims” are appropriate for expert analysis and will assist the finder of fact, especially a jury.

19. Rule 16(b) provides that a deadline in a scheduling order may be modified “for good cause,” although there is some uncertainty as to whether this standard applies only after a deadline has passed (which is not the case here). *See* Fed. R. Civ. P. 16(b)(4); *Marathon Fin. Ins.*

Inc. RRG v. Ford Motor Co., 591 F.3d 458, 470 (5th Cir. 2009) (“Federal Rule of Civil Procedure 16(b) governs amendment of pleadings after a scheduling order’s deadline to amend has expired”).

20. When the issue concerns an “untimely submission of expert reports,” the Fifth Circuit has specified the following for factors as guiding the decision: “(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice.” *S&W Enters. v. Southtrust Bank of Ala.*, 315 F.3d 533, 536 (5th Cir. 2003). Again, this test applies to a deadline which has already expired. Logically, therefore, a lesser standard should apply when a party seeks relief prior to the expiration of a deadline, as NexPoint does here.

21. Applying these or any factors:

- (i) this Adversary Proceeding is only some nine (9) months old and the parties have moved very quickly, with all discovery almost over;
- (ii) if this Motion is granted, all discovery in this Adversary Proceeding will have been completed by the end of 2021, still less than one (1) year after filing;
- (iii) the reason for the need to extend the deadline is the most logical reason that most frequently appears—that discovery has necessitated some previously unexpected action—which is one of the purposes of discovery;
- (iv) NexPoint’s failure to previously designate an expert was due solely to not having the benefit of Waterhouse’s and Seery’s recent deposition testimony, and is not the result of any delay or lack of diligence, as evidenced by the fact that NexPoint did already and timely designate two other experts on other issues (*i.e.* NexPoint did not sit on its responsibility to consider retaining experts);
- (v) the matter is important because the duties of care as specified in the Shared Services Agreement are terms of art necessitating an expert analysis, especially before a jury, and the matter goes to the heart of NexPoint’s affirmative defense, and is necessitated by Waterhouse’s testimony and not any prior action or inaction of NexPoint;
- (vi) there is no prejudice to the Debtor, which will have sufficient time to retain a rebuttal expert and take expert discovery (*i.e.* no witnesses or documents have been lost); and

- (vii) a continuance is easily available to avoid any prejudice to the Debtor—indeed, there is no need for a continuance even as the Adversary Proceeding has yet to be certified as trial ready and it is likely that the District Court will not schedule the Adversary Proceeding for trial for some time.

22. NexPoint submits that this Motion cannot come as a surprise to the Debtor. NexPoint has asserted its affirmative defense since the beginning. The only difference now is that, instead of a wholesale disregard of any duty to facilitate the Note payment, the issue has evolved to whether the Debtor or Waterhouse had any affirmative duty to act after the alleged instruction from Dondero. As it can be presumed that Waterhouse previously informed the Debtor or its counsel of this alleged instruction (as he apparently informed other employees at the Debtor), the Debtor likely knew what Waterhouse’s testimony would be well before NexPoint learned of that testimony. It is reasonable to conclude that the Debtor knew or should have known that the “standard of care” under the Shared Services Agreement would then become a material issue.

23. Accordingly, “good cause” to amend the Scheduling Order exists, if that higher standard even applies, and approving such amendment will not prejudice the Debtor and will instead serve the interests of justice.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, NexPoint respectfully requests that the Court enter an order: (i) granting this Motion; (ii) modifying the Scheduling Order to extend the deadline to designate experts and serve expert reports through December 13, 2021; (iii) modifying the Scheduling Order accordingly for the potential designation of rebuttal experts and service of rebuttal expert reports, and extending expert discovery; and (iv) granting NexPoint such other and further relief as may be proper.

RESPECTFULLY SUBMITTED this 29th day of October, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

Davor Rukavina
State Bar No. 24030781
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**ATTORNEYS FOR NEXPOINT ADVISORS,
L.P.**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, on October 28, 2021, he conferred with counsel for the Debtor, John Morris, and the Debtor opposes the relief requested herein.

/s/ Davor Rukavina

Davor Rukavina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on October 29, 2021, a true and correct copy of the foregoing document, including the exhibit thereto, was served on the following recipients via the Court's CM/ECF system:

Zachery Z. Annable on behalf of Plaintiff Highland Capital Management, L.P.
zannable@haywardfirm.com

Bryan C. Assink on behalf of Defendant James Dondero
bryan.assink@bondsellis.com

Greta M. Brouphy on behalf of Defendant The Dugaboy Investment Trust
gbrouphy@hellerdraper.com, dhepting@hellerdraper.com; vgamble@hellerdraper.com

Leslie A. Collins on behalf of Defendant The Dugaboy Investment Trust
lcollins@hellerdraper.com

Deborah Rose Deitsch-Perez on behalf of Defendant James Dondero
deborah.deitschperez@stinson.com, patricia.tomasky@stinson.com; kinga.mccoy@stinson.com

Deborah Rose Deitsch-Perez on behalf of Defendant Nancy Dondero
deborah.deitschperez@stinson.com, patricia.tomasky@stinson.com; kinga.mccoy@stinson.com

Douglas S. Draper on behalf of Defendant The Dugaboy Investment Trust
ddraper@hellerdraper.com,
dhepting@hellerdraper.com; vgamble@hellerdraper.com; mlandis@hellerdraper.com; gbrouphy@hellerdraper.com

Melissa S. Hayward on behalf of Plaintiff Highland Capital Management, L.P.
MHayward@HaywardFirm.com, mholmes@HaywardFirm.com

Juliana Hoffman on behalf of Creditor Committee Official Committee of Unsecured Creditors
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Paige Holden Montgomery on behalf of Creditor Committee Official Committee of Unsecured Creditors
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/s/ Davor Rukavina

Davor Rukavina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03005-sgj
	§	
NEXPOINT ADVISORS, L.P., JAMES	§	
DONDERO, NANCY DONDERO, AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

DECLARATION OF DAVOR RUKAVINA

STATE OF TEXAS

COUNTY OF DALLAS

I, Davor Rukavina, hereby state and testify to the following as being true and correct and under penalty of perjury pursuant to the laws of the United States of America:

1. My name is Davor Rukavina. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise competent to execute this Declaration.

2. I am an attorney duly licensed to practice law in the State of Texas. I am a shareholder at Munsch Hardt Kopf & Harr, P.C. I am the lead attorney for NexPoint Advisors, L.P. ("NexPoint"), one of the defendants in this Adversary Proceeding.

3. At issue in this Adversary Proceeding is a 30-year promissory note executed by NexPoint in the original principal amount of \$30,746,812.33 (the "Note"), although the Note had been paid down significantly by the time of the filing of this Adversary Proceeding.

4. Highland Capital Management, L.P. (the “Debtor”) alleges that the Note required NexPoint to make a payment of principal and interest on December 31, 2020, and that NexPoint failed to make this payment. Thus, in January, 2021, the Debtor sent notice that the Note had been accelerated and the Debtor demanded full and immediate payment.

5. The parties agreed by written stipulation that they would disclose experts and produce expert reports on or before October 29, 2021, and the Court’s scheduling order so requires. NexPoint requests an extension of this deadline. The following is the reason why.

6. One of NexPoint’s affirmative defenses in this Adversary Proceeding concerns that certain *Amended and Restated Shared Services Agreement* (the “Agreement”) between the Debtor and NexPoint dated January 1, 2018, a copy of which is attached hereto as Exhibit “A.” The Agreement was in place as of December 31, 2020, although the Debtor terminated it later in 2021. NexPoint alleges that, under the Agreement, the Debtor provided various services to NexPoint, including so-called “back office” services, including treasury, accounting, and payables services. NexPoint has alleged that, pursuant to the Agreement, the Debtor was responsible for ensuring that NexPoint made the allegedly required December 31, 2020 payment, although such payment would be made from NexPoint’s funds. NexPoint therefore asserts that the Debtor failed to do so and, therefore, caused the alleged default, which it now seeks to exploit, and that, but for the Debtor’s negligence, the Note would remain in place.

7. The foregoing has always been an affirmative defense of NexPoint in this Adversary Proceeding, including in its amended answer filed on September 1, 2021, a copy of which is attached hereto as Exhibit “B.”

8. On October 19, 2021, the Debtor deposed Frank Waterhouse (“Waterhouse”), as did I, in connection with this Adversary Proceeding. Waterhouse was the Debtor’s chief financial

officer in December, 2020, and either the treasurer or chief financial officer (either way an officer) of NexPoint in December, 2020.

9. Among other things, at this deposition, Waterhouse testified that, in early December, 2020, James Dondero ("Dondero"), who at that time controlled NexPoint but did not control the Debtor, instructed Waterhouse not to cause NexPoint to pay any more funds to the Debtor, including, expressly on the Note. A copy of this deposition transcript is attached as Exhibit "C."

10. This testimony was not expected by me or by NexPoint. I had understood that Dondero instructed Waterhouse to make no further payments on the Agreement, because Dondero believed that NexPoint had overpaid by millions of dollars on the Agreement and because that was what Dondero and Waterhouse had been discussing. I had not understood that Waterhouse would testify that Dondero instructed him to also not pay the Note specifically.

11. Prior to that deposition, I had never spoken to Waterhouse. Waterhouse presently serves as an officer of NexPoint; however, and unlike every other case I have been involved with, I have not been permitted to discuss with Waterhouse litigation matters. This is because Waterhouse is in litigation with the Debtor on other matters and has separate and independent counsel, Debra Dandeneau and Frances Smith, who would not permit me to speak directly to Waterhouse, which I understood to be a logical and appropriate instruction to protect their client. I did discuss with Ms. Dandeneau what Waterhouse may know about the litigation between the Debtor and my clients, but that primarily focused on defenses that another client of mine, Highland Capital Management Fund Advisors, L.P., has. And I did discuss with Ms. Dandeneau that Dondero told Waterhouse to not make payments, but I understood that to be limited to the Agreement and to not include the Note, since the topic under discussion (as it was told to me)

between Dondero and Waterhouse was the Agreement and overpayments on the Agreement, and not the Note.

12. In sum, prior to October 19, 2021, I did not know that Waterhouse would testify that Dondero told him to not pay on the Note, and I had no reasonable reason to suspect the same. My surprise is evident from the transcript of that deposition, where I asked Waterhouse multiple times whether he was sure that Dondero told him this—so much so that opposing counsel objected multiple times as “asked and answered,” and even objected as having been asked and answered “four time.” Exhibit “C” at 390-392.

13. Assuming that Waterhouse’s testimony on this issue will be accepted by a trier of fact, the question is whether, from NexPoint’s perspective, Waterhouse had no further duties to review, confirm, investigate, or to discuss the issue with Dondero. In that respect, section 6.01 of the Agreement, labeled “standard of care,” states that the Debtor and Waterhouse “shall discharge its duties under this Agreement with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.”

14. I deposed Jim Seery on October 21, 2021, and asked him various questions about this provision of the Agreement. Mr. Seery testified to the effect that he did not believe that the Agreement obligated the Debtor or Waterhouse to do anything further after Dondero told Waterhouse to not pay the Note (again, assuming that this was true). I do not have a copy of Mr. Seer’s deposition yet.

15. With Mr. Seery testifying that he did not believe that the Agreement required the Debtor or Waterhouse to do anything further if Dondero in fact gave the instruction Waterhouse testified that he did, NexPoint concluded that it needed to retain an expert to review whether the “standard of care” specified in the Agreement compelled the Debtor or Waterhouse to do anything

further after Dondero gave the alleged instruction, such as checking with him to see if they understood him correctly, advising him of the potential serious consequences of a default, trying to dissuade him, or at least asking him once again prior to December 31, 2020 whether the payment should be made.

16. On October 22, 2021, I began searching for a potential expert. On October 26, 2021, I contacted Steven J. Pully about the potential engagement. After clearing conflicts and coming to an agreement, Mr. Pully agreed to the engagement on October 28, 2021. The engagement letter has yet to be finalized and executed, but I have every confidence that it will and the urgency of the matter necessitates this Declaration at this time. I have been extremely diligent in searching for and finding an expert once NexPoint determined that the retention of an expert was appropriate, which did not occur until the Seery deposition on October 21, 2021.

17. Even though NexPoint has retained Mr. Pully as of October 28, 2021, it is not possible for Mr. Pully to formulate an opinion and prepare a report by October 29, 2021. Among other things, various deposition transcripts of important witnesses have yet to be received and reviewed by Mr. Pully, and Mr. Pully has yet to review the underlying documents. Assuming no undue delays with respect to deposition transcripts, Mr. Pully should be able to prepare a report by December 13, 2021.

18. NexPoint therefore seeks an extension of the expert designation and report deadline through December 13, 2021, in order that justice may be done and not for delay or any improper purpose, NexPoint not having designated an expert before due solely to the lack of knowledge that Waterhouse would testify as he did on October 19, 2021 and that Mr. Seery would testify as to his view that the Agreement did not require Waterhouse to do anything thereafter.

I hereby swear under oath and penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



DAVOR RUKAVINA

“Affiliate” shall mean with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term “control” means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

“Applicable Asset Criteria and Concentrations” means any applicable eligibility criteria, portfolio concentration limits and other similar criteria or limits which the Management Company instructs in writing to the Staff and Services Provider in respect of the Portfolio or one or more Accounts, as such criteria or limits may be modified, amended or supplemented from time to time in writing by the Management Company;

“Applicable Law” shall mean, with respect to any Person or property of such Person, any action, code, consent decree, constitution, decree, directive, enactment, finding, guideline, law, injunction, interpretation, judgment, order, ordinance, policy statement, proclamation, formal guidance, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, writ, or any particular section, part or provision thereof of any Governmental Authority to which the Person in question is subject or by which it or any of its property is bound.

“Client or Account” shall mean any fund, client or account advised by the Management Company, as applicable.

“Covered Person” shall mean the Staff and Services Provider, any of its Affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)).

“Governmental Authority” shall mean (i) any government or quasi-governmental authority or political subdivision thereof, whether national, state, county, municipal or regional, whether U.S. or non-U.S.; (ii) any agency, regulator, arbitrator, board, body, branch, bureau, commission, corporation, department, master, mediator, panel, referee, system or instrumentality of any such government, political subdivision or other government or quasi-government entity, whether non-U.S. or U.S.; and (iii) any court, whether U.S. or non-U.S.

“Indebtedness” shall mean: (a) all indebtedness for borrowed money and all other obligations, contingent or otherwise, with respect to surety bonds, guarantees of borrowed money, letters of credit and bankers’ acceptances whether or not matured, and hedges and other derivative contracts and financial instruments; (b) all obligations evidenced by notes, bonds, debentures, or similar instruments, or incurred under bank guaranty or letter of credit facilities or credit agreements; (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to any property of the Management Company or any subsidiary; (d) all capital lease obligations; (e) all indebtedness guaranteed by such Person or any of its subsidiaries; and (f) all indebtedness guaranteed by such Person or any of its subsidiaries.

“Operating Guidelines” means any operating guidelines attached to any portfolio management agreement, investment management agreement or similar agreement entered into between the Management Company and a Client or Account.

“Portfolio” means the portfolio of securities and other assets, including without limitation, financial instruments, equity investments, collateral loan obligations, debt securities, preferred return notes and other similar obligations held directly or indirectly by, or on behalf of, Clients and Accounts from time to time;

“Securities Act” shall mean the Securities Act of 1933, as amended.

Section 1.02 Interpretation. The following rules apply to the use of defined terms and the interpretation of this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) “or” is not exclusive (unless preceded by “either”) and “include” and “including” are not limiting; (iii) unless the context otherwise requires, references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented, waived and otherwise modified from time to time; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor; (v) a reference to a Person includes its successors and assigns; (vi) a reference to a Section without further reference is to the relevant Section of this Agreement; (vii) the headings of the Sections and subsections are for convenience and shall not affect the meaning of this Agreement; (viii) “writing”, “written” and comparable terms refer to printing, typing, lithography and other shall mean of reproducing words in a visible form (including telefacsimile and electronic mail); (ix) “hereof”, “herein”, “hereunder” and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; and (x) references to any gender include any other gender, masculine, feminine or neuter, as the context requires.

ARTICLE II

SERVICES

Section 2.01 General Authority. Highland is hereby appointed as Staff and Services Provider for the purpose of providing such services and assistance as the Management Company may request from time to time to, and if applicable, to make available the Shared Employees to, the Management Company in accordance with and subject to the provisions of this Agreement and the Staff and Services Provider hereby accepts such appointment. The Staff and Services Provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Section 2.02 Provision of Services. Without limiting the generality of Section 2.01 and subject to Section 2.04 (Applicable Asset Criteria and Concentrations) below, the Staff and Services Provider hereby agrees, from the date hereof, to provide the following back- and middle-office services and administrative, infrastructure and other services to the Management Company.

(a) *Back- and Middle-Office*: Assistance and advice with respect to back- and middle-office functions including, but not limited to, investment research, trade desk services,

including trade execution and settlement, finance and accounting, payments, operations, book keeping, cash management, cash forecasting, accounts payable, accounts receivable, expense reimbursement, vendor management, and information technology (including, without limitation, general support and maintenance (OMS, development, support), telecom (cellphones, telephones and broadband) and WSO);

(b) *Legal/Compliance/Risk Analysis.* Assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis;

(c) *Tax.* Assistance and advice with respect to tax audit support, tax planning and tax preparation and filing.

(d) *Management of Clients and Accounts.* Assistance and advice with respect to (i) the adherence to Operating Guidelines by the Management Company, and (ii) performing any obligations of the Management Company under or in connection with any back- and middle-office function set forth in any portfolio management agreement, investment management agreement or similar agreement in effect between the Management Company and any Client or Account from time to time.

(e) *Valuation.* Advice relating to the appointment of suitable third parties to provide valuations on assets comprising the Portfolio and including, but not limited to, such valuations required to facilitate the preparation of financial statements by the Management Company or the provision of valuations in connection with, or preparation of reports otherwise relating to, a Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity;

(f) *Execution and Documentation.* Assistance relating to the negotiation of the terms of, and the execution and delivery by the Management Company of, any and all documents which the Management Company considers to be necessary in connection with the acquisition and disposition of an asset in the Portfolio by the Management Company or a Client or Account managed by the Management Company, transactions involving the Management Company or a Client or Account managed by the Management Company, and any other rights and obligations of the Management Company or a Client or Account managed by the Management Company;

(g) *Marketing.* Provide access to marketing team representatives to assist with the marketing of the Management Company and any specified Clients or Accounts managed by the Management Company conditional on the Management Company's agreement that any incentive compensation related to such marketing shall be borne by the Management Company;

(h) *Reporting.* Assistance relating to any reporting the Management Company is required to make in relation to the Portfolio or any Client or Account, including reports relating to (i) credit facility reporting and purchases, sales, liquidations, acquisitions, disposals, substitutions and exchanges of assets in the Portfolio, (ii) the requirements of an applicable regulator, or (iii) other type of reporting which the Management Company and Staff and Services Provider may agree from time to time;

(i) *Administrative Services.* The provision of office space, information technology services and equipment, infrastructure, rent and parking and other related services requested or utilized by the Management Company from time to time;

(j) *Shared Employees.* To the extent applicable, the provision of Shared Employees and such additional human capital as may be mutually agreed by the Management Company and the Staff and Services Provider in accordance with the provisions of Section 2.03 hereof;

(k) *Ancillary Services.* Assistance and advice on all things ancillary or incidental to the foregoing; and

(l) *Other.* Assistance and advice relating to such other back- and middle-office services in connection with the day-to-day business of the Management Company as the Management Company and the Staff and Services Provider may from time to time agree.

For the avoidance of doubt, none of the services contemplated hereunder shall constitute investment advisory services, and the Staff & Services Provider shall not provide any advice to the Management Company or perform any duties on behalf of the Management Company, other than the back- and middle-office services contemplated herein, with respect to (a) the general management of the Management Company, its business or activities, (b) the initiation or structuring of any Client or Account or similar securitization, (c) the substantive investment management decisions with respect to any Client or Account or any related collateral obligations or securitization, (d) the actual selection of any collateral obligation or assets by the Management Company, (e) binding recommendations as to any disposal of or amendment to any Collateral Obligation or (f) any similar functions.

Section 2.03 Shared Employees.

(a) The Staff and Services Provider hereby agrees and consents that each Shared Employee, if any, shall be employed by the Management Company, and the Management Company hereby agrees and consents that each Shared Employee shall be employed by the Staff and Services Provider. Except as may otherwise separately be agreed in writing between the applicable Shared Employee and the Management Company and/or the Staff and Services Provider, in each of their discretion, each Shared Employee is an at-will employee and no guaranteed employment or other employment arrangement is agreed or implied by this Agreement with respect to any Shared Employee, and for avoidance of doubt this Agreement shall not amend, limit, constrain or modify in any way the employment arrangements as between any Shared Employee and the Staff and Services Provider or as between any Shared Employee and the Management Company, it being understood that the Management Company may enter into a short-form employment agreement with any Shared Employee memorializing such Shared Employee's status as an employee of the Management Company. To the extent applicable, the Staff and Services Provider shall ensure that the Management Company has sufficient access to the Shared Employees so that the Shared Employees spend adequate time to provide the services required hereunder. The Staff and Services Provider may also employ the services of persons other than the Specified Persons as it deems fit in its sole discretion

(d) Each Party may continue to oversee, supervise and manage the services of each Shared Employee in order to (1) ensure compliance with the Party's compliance policies and procedures, (2) ensure compliance with regulations applicable to the Party and (3) protect the interests of the Party and its clients; *provided* that Staff and Services Provider shall (A) cooperate with the Management Company's supervisory efforts and (B) make periodic reports to the Management Company regarding the adherence of Shared Employees to Applicable Law, including but not limited to the 1940 Act, the Advisers Act and the United States Commodity Exchange Act of 1936, as amended, in performing the services hereunder.

(f) The Staff and Services Provider shall ensure that each Shared Employee has any registrations, qualifications and/or licenses necessary to provide the services hereunder.

(h) The Parties shall cooperate to ensure that, when so required, each has adopted a Code of Ethics meeting the requirements of the Advisers Act ("Code of Ethics") that is consistent with applicable law and which is substantially similar to the other Party's Code of Ethics.

(i) The Staff and Services Provider shall make reasonably available for use by the Management Company, including through Shared Employees providing services pursuant to this Agreement, any relevant intellectual property and systems necessary for the provision of the services hereunder.

(j) The Staff and Services Provider shall require that each Shared Employee:

(i) certify that he or she is subject to, and has been provided with, a copy of each Party's Code of Ethics and will make such reports, and seek prior clearance for such actions and activities, as may be required under the Codes of Ethics;

(ii) be subject to the supervision and oversight of each Party's officers and directors, including without limitation its Chief Compliance Officer ("CCO"), which CCO may be the same Person, with respect to the services provided to that Party or its clients;

(iii) provide services hereunder and take actions hereunder only as approved by the Management Company;

(iv) provide any information requested by a Party, as necessary to comply with applicable disclosure or regulatory obligations;

(v) to the extent authorized to transact on behalf of the Management Company or a Client or Account, take reasonable steps to ensure that any such transaction is consistent with any policies and procedures that may be established by the Parties and all Applicable Asset Criteria and Concentrations; and

(vi) act, at all times, in a manner consistent with the fiduciary duties and standard of care owed by the Management Company to its members and direct or indirect investors or to a Client or Account as well as clients of Staff and Services Provider by seeking to ensure that, among other things, information about any investment advisory or trading activity applicable to a particular client or group of clients is not used to benefit the Shared Employee, any Party or any other client or group of clients in contravention of such fiduciary duties or standard of care.

(k) Unless specifically authorized to do so, or appointed as an officer or authorized person of the Management Company with such authority, no Shared Employee may contract on behalf or in the name of the Management Company, acting as principal.

Section 2.04 Applicable Asset Criteria and Concentrations. The Management Company will promptly inform the Staff and Services Provider in writing of any Applicable Asset Criteria and Concentrations to which it agrees from time to time and the Staff and Services Provider shall take such Applicable Asset Criteria and Concentrations into account when providing assistance and advice in accordance with Section 2.02 above and any other assistance or advice provided in accordance with this Agreement.

Section 2.05 Compliance with Management Company Policies and Procedures. The Management Company will from time to time provide the Staff and Services Provider and the

Shared Employees, if any, with any policy and procedure documentation which it establishes internally and to which it is bound to adhere in conducting its business pursuant to regulation, contract or otherwise. Subject to any other limitations in this Agreement, the Staff and Services Provider will use reasonable efforts to ensure any services it and the Shared Employees provide pursuant to this Agreement complies with or takes account of such internal policies and procedures.

Section 2.06 Authority. The Staff and Services Provider's scope of assistance and advice hereunder is limited to the services specifically provided for in this Agreement. The Staff and Services Provider shall not assume or be deemed to assume any rights or obligations of the Management Company under any other document or agreement to which the Management Company is a party. Notwithstanding any other express or implied provision to the contrary in this Agreement, the activities of the Staff and Services Provider pursuant to this Agreement shall be subject to the overall policies of the Management Company, as notified to the Staff and Services Provider from time to time. The Staff and Services Provider shall not have any duties or obligations to the Management Company unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which the Staff and Services Provider is a party).

Section 2.07 Third Parties.

(a) The Staff and Services Provider may employ third parties, including its affiliates, to render advice, provide assistance and to perform any of its duties under this Agreement; *provided* that notwithstanding the employment of third parties for any such purpose, the Staff and Services Provider shall not be relieved of any of its obligations or liabilities under this Agreement.

(b) In providing services hereunder, the Staff and Services Provider may rely in good faith upon and will incur no liability for relying upon advice of nationally recognized counsel (which may be counsel for the Management Company, a Client or Account or any Affiliate of the foregoing), accountants or other advisers as the Staff and Services Provider determines, in its sole discretion, is reasonably appropriate in connection with the services provided by the Staff and Services Provider under this Agreement.

Section 2.08 Management Company to Cooperate with the Staff and Services Provider. In furtherance of the Staff and Services Provider's obligations under this Agreement the Management Company shall cooperate with, provide to, and fully inform the Staff and Services Provider of, any and all documents and information the Staff and Services Provider reasonably requires to perform its obligations under this Agreement.

Section 2.09 Power of Attorney. If the Management Company considers it necessary for the provision by the Staff and Services Provider of the assistance and advice under this Agreement (after consultation with the Staff and Services Provider), it may appoint the Staff and Services Provider as its true and lawful agent and attorney, with full power and authority in its name to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Staff and Services Provider reasonably deems appropriate or necessary in connection with the execution and settlement of acquisitions of assets as directed by the Management Company

of any material indenture, contract, lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound.

ARTICLE V

COVENANTS

Section 5.01 Compliance: Advisory Restrictions.

(a) The Staff and Services Provider shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Staff and Services Provider. Specifically, the Staff and Services Provider agrees that it will provide the Management Company with reasonable access to information relating to the performance of Staff and Services Provider's obligations under this Agreement.

(b) This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any portfolio management agreement or any part thereof. It is the express intention of the parties hereto that this Agreement and all services performed hereunder comply in all respects with all (a) applicable contractual provisions and restrictions contained in each portfolio management agreement, investment management agreement or similar agreement and each document contemplated thereby; and (b) Applicable Laws (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the services to be provided under this Agreement shall automatically be limited without action by any person or entity, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

Section 5.02 Records: Confidentiality.

The Staff and Services Provider shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon not less than three (3) Business Days' prior notice; *provided* that the Staff and Services Provider shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

The Staff and Services Provider shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Staff and Services Provider hereunder and shall not disclose any such information to non-affiliated third parties, except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its

EXCULPATION AND INDEMNIFICATION

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Section 6.02 Exculpation. To the fullest extent permitted by law, no Covered Person will be liable to the Management Company, any Member, or any shareholder, partner or member thereof, for (i) any acts or omissions by such Covered Person arising out of or in connection with the conduct of the business of the Management Company or its General Partner, or any investment made or held by the Management Company or its General Partner, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a “Disabling Conduct”) on the part of such Covered Person, (ii) any act or omission of any Investor, (iii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of such Covered Person, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of such Covered Person with reasonable care, or (iv) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Management Company or any Member, no Covered Person acting under this Agreement shall be liable to the Management Company or to any such Member for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 6.02 shall exculpate any Covered Person regardless of such Covered Person’s sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to the Management Company or any Member solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to the Management Company or the Members, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to the Management Company or any Member in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

Section 6.03 Indemnification by the Management Company. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated (“Claims”), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Management Company or its General Partner, or activities undertaken in connection with the Management Company or its General Partner, or otherwise relating to or

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 6.03 shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 6.03 to the fullest extent permitted by law.

13

substantially the same staff; *provided further* that the Staff and Services Provider shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Staff and Services Provider will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

Section 8.03 Non-Recourse; Non-Petition.

(a) The Staff and Services Provider agrees that the payment of all amounts to which it is entitled pursuant to this Agreement shall be payable by the Management Company only to the extent of assets held in the Portfolio.

(b) Notwithstanding anything to the contrary contained herein, the liability of the Management Company to the Staff and Services Provider hereunder is limited in recourse to the Portfolio, and if the proceeds of the Portfolio following the liquidation thereof are insufficient to meet the obligations of the Management Company hereunder in full, the Management Company shall have no further liability in respect of any such outstanding obligations, and such obligations and all claims of the Staff and Services Provider or any other Person against the Management Company hereunder shall thereupon extinguish and not thereafter revive. The Staff and Services Provider accepts that the obligations of the Management Company hereunder are the corporate obligations of the Management Company and are not the obligations of any employee, member, officer, director or administrator of the Management Company and no action may be taken against any such Person in relation to the obligations of the Management Company hereunder.

(c) Notwithstanding anything to the contrary contained herein, any Staff and Services Provider agrees not to institute against, or join any other Person in instituting against, the Management Company any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under United States federal or state bankruptcy laws, or similar laws until at least one year and one day (or, if longer, the then applicable preference period plus one day) after the payment in full all amounts payable in respect of any Indebtedness incurred to finance any portion of the Portfolio; *provided* that nothing in this provision shall preclude, or be deemed to stop, the Staff and Services Provider from taking any action prior to the expiration of the aforementioned one year and one day period (or, if longer, the applicable preference period then in effect plus one day) in (i) any case or proceeding voluntarily filed or commenced by the Management Company, or (ii) any involuntary insolvency proceeding filed or commenced against the Management Company by a Person other than the Staff and Services Provider.

(d) The Management Company hereby acknowledges and agrees that the Staff and Services Provider's obligations hereunder shall be solely the corporate obligations of the Staff and Services Provider, and are not the obligations of any employee, member, officer, director or administrator of the Staff and Services Provider and no action may be taken against any such Person in relation to the obligations of the Staff and Services Provider hereunder.

(e) The provisions of this Section 8.03 shall survive termination of this Agreement for any reason whatsoever.

By: FW
Name: Frank Waterhouse
Title: Treasurer

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
Texas Bar No. 24070790
MUNSCH HARDT KOPF & HARR, P.C.
500 N. Akard Street, Suite 3800
Dallas, Texas 75202-2790
Telephone: (214) 855-7500
Facsimile: (214) 978-4375

Counsel for Defendant NexPoint Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Case No. 19-34054-SGJ-11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Chapter 11
	§	
Debtor.	§	
<hr/>		
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	Adversary No.: 21-03005-sgj
NEXPOINT ADVISORS, L.P., JAMES	§	
DONDERO, NANCY DONDERO, AND	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

**DEFENDANT NEXPOINT ADVISORS, L.P.’S
ANSWER TO AMENDED COMPLAINT**

Defendant NexPoint Advisors, L.P. (“NexPoint”), a defendant in the above-styled and numbered adversary proceeding (the “Adversary Proceeding”) filed by Highland Capital Management, L.P. (the “Plaintiff”), hereby files this Answer (the “Answer”) responding to the *Amended Complaint for (I) Breach of Contract and (II) Turnover of Property (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty* [Adv. **Dkt. 73**] (the “Amended Complaint”). Where an allegation in the Amended Complaint is not expressly admitted in this Answer, it is denied.

Exhibit B

THE PARTIES

CASE BACKGROUND

16. Defendant NexPoint admits the allegations in paragraph 16 of the Amended Complaint.

17. Defendant NexPoint admits the allegations in paragraph 17 of the Amended Complaint.

18. Defendant NexPoint admits the allegations in paragraph 18 of the Amended Complaint.

19. Defendant NexPoint admits the allegations in paragraph 19 of the Amended Complaint.

STATEMENT OF FACTS

20. Defendant NexPoint admits that it has executed at least one promissory note under which the Debtor is a payee. Any allegations in paragraph 20 note expressly admitted are denied.

21. Defendant NexPoint admits the allegations in paragraph 21 of the Amended Complaint.

22. Defendant NexPoint denies paragraph 22 of the Complaint. The document speaks for itself and the quote set forth in paragraph 22 is not verbatim.

23. Defendant NexPoint admits the allegations in paragraph 23 of the Amended Complaint.

24. Defendant NexPoint denies paragraph 24 of the Complaint. The document speaks for itself and the quote set forth in paragraph 24 is not verbatim.

25. Defendant NexPoint admits the allegations in paragraph 25 of the Amended Complaint.

26. Defendant NexPoint admits that it did not make a payment under the Note on December 31, 2020. Defendant NexPoint denies that any payment was due under the Note on December 31, 2020. To the extent not expressly admitted, paragraph 26 of the Amended Complaint is denied.

27. Defendant NexPoint admits that Exhibit 2 to the Amended Complaint (the “Demand Letter”) is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 27 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 27 of the Amended Complaint is denied.

28. Defendant NexPoint admits that it paid the Debtor \$1,406,111.92 on January 14, 2021, but denies that any payment was due on December 31, 2020 or that this was an attempt to cure a default. To the extent not expressly admitted, paragraph 28 of the Amended Complaint is denied.

29. Defendant NexPoint admits that Exhibit 3 to the Amended Complaint (the “Second Demand Letter”) is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 29 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 29 of the Amended Complaint is denied.

30. To the extent paragraph 30 of the Amended Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits paragraph 30 of the Amended Complaint.

31. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 of the Amended Complaint and therefore denies the same.

32. Defendant NexPoint denies the allegations in paragraph 32 of the Amended Complaint.

33. Defendant NexPoint admits that the Debtor filed the Original Complaint in this action on January 22, 2021, as alleged in the first sentence of paragraph 33 of the Amended

35. Defendant NexPoint admits the allegations in paragraph 35 of the Amended Complaint.

37. Defendant NexPoint admits that NexPoint's First Amended Answer speaks for itself. To the extent paragraph 37 contradicts the First Amended Answer, it is denied.

39. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 of the Amended Complaint and therefore denies the same.

41. Defendant NexPoint admits that Exhibit 4 to the Amended Complaint is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 41 of the Amended Complaint asserts a legal conclusion, no response is required, and

50. Paragraph 50 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

51. Paragraph 51 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

52. Paragraph 52 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

53. Paragraph 53 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. Defendant NexPoint admits that the Plaintiff transmitted the Demand Letter and the Second Demand Letter, and those documents speak for themselves.

54. Paragraph 54 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

55. Paragraph 55 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

THIRD CLAIM FOR RELIEF
(Against NexPoint)
(Avoidance and Recovery of Actual Fraudulent Transfer under 11 U.S.C. §§ 548(a)(1)(A) and 550)

56. Paragraph 56 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

57. Paragraph 57 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

58. Paragraph 58 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

68. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

69. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

70. Paragraph 70 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

SIXTH CLAIM FOR RELIEF
(Against Dugaboy Investment Trust and Nancy Dondero)
(Breach of Fiduciary Duty)

71. Paragraph 71 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

72. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

73. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

74. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

SEVENTH CLAIM FOR RELIEF
(Against James Dondero and Nancy Dondero)
(Aiding and Abetting a Breach of Fiduciary Duty)

75. Paragraph 75 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

76. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

77. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

78. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

79. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

Defendant NexPoint denies that the Plaintiff is entitled to the relief requested in the prayer, including as to parts (i), (ii), (iii), (iv), (v), (vi), (vii) and (iii) [sic].

AFFIRMATIVE DEFENSES

80. Pursuant to that certain Shared Services Agreement, the Plaintiff was responsible for making payments on behalf of the Defendant under the note. Any alleged default under the note was the result of the Plaintiff's own negligence, misconduct, breach of contract, etc.

81. Delay in the performance of a contract is excused when the party who seeks to enforce the contract caused the delay. It was therefore inappropriate for the Plaintiff to accelerate the note when the brief delay in payment was the Plaintiff's own fault.

82. Furthermore, the Plaintiff has waived the right to accelerate the note and /or the Plaintiff is estopped to enforce the alleged acceleration by accepting payment after the same.

83. Furthermore, the Plaintiff's claims are barred in whole or in part because, prior to any alleged breach or acceleration, the Plaintiff agreed that it would not collect on the note upon fulfilment of certain conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Defendant Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Defendant James Dondero's control. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant NexPoint believes there may be testimony or email correspondence that discusses the

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2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 DALLAS DIVISION

5 IN RE:

Chapter 11

6 HIGHLAND CAPITAL
MANAGEMENT, L.P.,

CASE NO.
19-34054-SGI11

7 Debtor.

8 HIGHLAND CAPITAL MANAGEMENT, L.P.,

9 Plaintiff,

10 vs.

Adversary
Proceeding No.
21-03000-SGI

11 HIGHLAND CAPITAL MANAGEMENT
12 FUND ADVISORS, L.P.; NEXPOINT
13 ADVISORS, L.P.; HIGHLAND
14 INCOME FUND; NEXPOINT
15 STRATEGIC OPPORTUNITIES FUND;
16 NEXPOINT CAPITAL, INC.; and
17 CLO HOLDCO, LTD.,

18 Defendants.

19 REMOTE VIDEOTAPED DEPOSITION OF

20 FRANK WATERHOUSE

21 October 19, 2021

22 Reported by: Susan S. Klinger, RMR-CRR, CSR

23 Job No: 201195

1 WATERHOUSE - 10-19-21

2
3
4 October 19, 2021

5 9:30 a.m.

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7
8
9 Remote Deposition of FRANK WATERHOUSE,
10 held before Susan S. Klinger, a Registered
11 Merit Reporter and Certified Realtime Reporter
12 of the State of Texas.
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24
25

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A P P E A R A N C E S:

(All appearances via Zoom.)

Attorneys for the Reorganized Highland Capital
Management:

John Morris, Esq.

Hayley Winograd, Esq.

PACHULSKI STANG ZIEHL & JONES

780 Third Avenue

New York, New York 10017

Attorneys for the Witness:

Debra Dandeneau, Esq.

Michelle Hartmann, Esq.

BAKER MCKENZIE

1900 North Pearl Street

Dallas, Texas 75201

Attorneys for NexPoint Advisors, LP and
Highland Capital Management Fund Advisors,
L.P.:

Davor Rukavina, Esq.

An Nguyen, Esq.

MUNSCH HARDT KOPF & HARDD

500 North Akard Street

Dallas, Texas 75201-6659

1 WATERHOUSE - 10-19-21

2 Attorneys for Jim Dondero, Nancy Dondero, HCRA,
3 and HCMS:

4 Deborah Deitsch-Perez, Esq.

5 Michael Aigen, Esq.

6 STINSON

7 3102 Oak Lawn Avenue

8 Dallas, Texas 75219

9
10 Attorneys for Dugaboy Investment Trust:

11 Warren Horn, Esq.

12 HELLER, DRAPER & HORN

13 650 Poydras Street

14 New Orleans, Louisiana 70130

15
16 Attorneys for Marc Kirschner as the trustee for
17 the litigation SunTrust:

18 Deborah Newman, Esq.

19 QUINN EMANUEL URQUHART & SULLIVAN

20 51 Madison Avenue

21 New York, New York 10010

22
23 Also Present:

24 Ms. La Asia Canty

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2 P R O C E E D I N G S

3 VIDEOGRAPHER: Good morning,

4 Counselors. My name is Scott Hatch. I'm a
5 certified legal videographer in association
6 with TSG Reporting, Inc.

7 Due to the severity of COVID-19 and
8 following the practice of social
9 distancing, I will not be in the same room
10 with the witness. Instead, I will record
11 this videotaped deposition remotely. The
12 reporter, Susan Klinger, also will not be
13 in the same room and will swear the witness
14 remotely.

15 Do all parties stipulate to the
16 validity of this video recording and remote
17 swearing, and that it will be admissible in
18 the courtroom as if it had been taken
19 following Rule 30 of the Federal Rules of
20 Civil Procedures and the state's rules
21 where this case is pending?

22 MR. HORN: Yes.

23 MS. DANDENEAU: Yes.

24 MR. MORRIS: Yes. John Morris. I
25 would just try to do a negative notice

1 WATERHOUSE - 10-19-21

2 here, as we did yesterday. If anybody has
3 a problem with what was just stated, can
4 you state your objection now?

5 Okay. No response, so everybody
6 accepts the stipulation and the instruction
7 that was just given.

8 VIDEOGRAPHER: Thank you. This is
9 the start of media labeled Number 1 of the
10 video recorded deposition of Frank
11 Waterhouse In Re: Highland Capital
12 Management, L.P., in the United States
13 Bankruptcy Court for the Northern District
14 of Texas, Dallas Division, Case Number
15 21-03000-SGI.

16 This deposition is being held via
17 video conference with participants
18 appearing remotely due to COVID-19
19 restrictions on Tuesday, October 19th, 2021
20 at approximately 9:32 a.m. My name is
21 Scott Hatch, legal video specialist with
22 TSG Reporting, Inc. headquartered at 228
23 East 45th Street, New York, New York. The
24 court reporter is Susan Klinger in
25 association with TSG Reporting.

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2 Counsel, please introduce
3 yourselves.

4 MR. MORRIS: John Morris, Pachulski
5 Stang Ziehl & Jones for the reorganized
6 Highland Capital Management, L.P., the
7 plaintiff in these actions.

8 MS. DANDENEAU: Deborah Dandeneau
9 from Baker McKenzie. My partner, Michelle
10 Hartmann, is also in the room with me,
11 representing Frank Waterhouse individually.

12 MS. DEITSCH-PEREZ: Deborah
13 Deitsch-Perez from Stinson, LLP,
14 representing Jim Dondero, Nancy Dondero,
15 HCRA, and HCMS.

16 MR. HORN: Warren Horn with Heller,
17 Draper & Horn in New Orleans representing
18 Dugaboy Investment Trust.

19 MR. RUKAVINA: Davor Rukavina with
20 Munsch Hardt Kopf & Harr in Dallas
21 representing NexPoint Advisors, LP and
22 Highland Capital Management Fund Advisors,
23 L.P.

24 MR. AIGEN: Michael Aigen from
25 Stinson, and I represent the same parties

1 WATERHOUSE - 10-19-21

2 as Deborah Deitsch-Perez.

3 MS. NEWMAN: This is Deborah Newman
4 from Quinn Emanuel. We represent the
5 litigation -- Marc Kirschner as the trustee
6 for the litigation SunTrust.

7 MR. MORRIS: I think that is
8 everybody.

9 VIDEOGRAPHER: Thank you. Will the
10 court reporter please swear in the witness.

11 FRANK WATERHOUSE,
12 having been first duly sworn, testified as
13 follows:

14 EXAMINATION

15 BY MR. MORRIS:

16 Q. Please state your name for the
17 record.

18 A. My name is Frank Waterhouse.

19 Q. Good morning, Mr. Waterhouse. I'm
20 John Morris, as you know, from Pachulski Stang
21 Ziehl & Jones. You understand that my firm and
22 I represent Highland Capital Management, L.P.;
23 is that right?

24 A. Yes.

25 Q. Okay. And do you understand that

1 WATERHOUSE - 10-19-21

2 we're here today for your deposition in your
3 individual capacity?

4 A. Yes.

5 Q. Did you review and -- did you
6 receive and review a subpoena that Highland
7 Capital Management, L.P., served upon you?

8 A. Yes.

9 Q. You have been deposed before; right?

10 A. Yes.

11 Q. How many times have you been
12 deposed?

13 A. About three or four times.

14 Q. Okay. And I defended you in one
15 deposition; isn't that right?

16 A. That is correct.

17 Q. So the general ground rules for this
18 deposition are largely the same as the
19 depositions you have given before. And that is
20 I will ask you a series of questions, and it is
21 important that you allow me to finish my
22 question before you begin your answer; is that
23 fair?

24 A. Yes.

25 Q. And it is important that I allow you

1 WATERHOUSE - 10-19-21

2 to finish your answers before I begin a
3 question, but if I fail to do that, will you
4 let me know?

5 A. I can certainly do that.

6 Q. Okay. Do you understand that this
7 deposition is being videotaped?

8 A. Yes.

9 Q. You understand that I may seek to
10 use portions of the videotape in a court of
11 law?

12 A. I did not know that, until you just
13 said that.

14 Q. Okay. And you are aware of that now
15 before the deposition begins substantively; is
16 that right?

17 A. Yes.

18 Q. So unlike I think the other
19 depositions that you have given, this one is
20 being given remotely. So that presents some
21 unique challenges, at least as compared to a
22 deposition that is taken in-person.

23 From time to time we're going to put
24 documents up on the screen, Mr. Waterhouse.
25 And it is important that I give you the

1 WATERHOUSE - 10-19-21

2 opportunity to review any portion of the
3 document that you think you need in order to
4 fully and completely answer the question.

5 So I would ask you to let me know if
6 there is a portion of a document that you need
7 to see in order to fully and completely answer
8 the question. Can you do that for me?

9 A. Yes.

10 MS. DANDENEAU: Mr. Morris, I would
11 just note that we do have hard copies of
12 the documents that you sent, so if you can
13 just refer to the exhibit number as
14 reflected in the documents that you sent,
15 Mr. Waterhouse will be able to look at the
16 hard copies of those documents.

17 MR. MORRIS: I appreciate that,
18 and -- and I will encourage him to do so.
19 There will be other documents that we did
20 not send to you that we'll be using today
21 though.

22 Q. Okay. With that as background, if
23 there is anything that I ask you, sir, that you
24 don't understand, will you let me know?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Are you currently employed?

3 A. Yes.

4 Q. By whom?

5 A. The Skyview Group.

6 Q. When did you become employed by the
7 Skyview Group?

8 A. I believe March 1st of 2021.

9 Q. Do you have a title at Skyview?

10 A. Yes.

11 Q. What is your title?

12 A. My title is chief financial officer.

13 Q. Do you report to anybody in your
14 role as CFO?

15 A. I don't, no.

16 Q. No. Is there a president or a CEO
17 of Skyview?

18 A. Yes.

19 Q. Who is that?

20 A. That is Scott Ellington.

21 Q. But you don't report to
22 Mr. Ellington; is that right?

23 A. I don't think so.

24 Q. Does Skyview Group --

25 MS. DANDENEAU: Excuse me, we --

1 WATERHOUSE - 10-19-21

2 A. I -- I -- I might. I just -- I
3 don't recall.

4 Q. Okay. Does Skyview Group provide
5 any services to any entity directly or
6 indirectly owned or controlled by Jim Dondero?

7 A. Yes.

8 Q. Can you name -- is that pursuant to
9 written contracts?

10 A. Yes.

11 Q. And do you know how many contracts
12 exist?

13 A. Approximately six or so.

14 Q. And is the Skyview Group made up of
15 individuals who were formerly employees of
16 Highland Capital Management, L.P.?

17 A. No.

18 Q. Do you know how many -- how many --
19 how many employees does Skyview have?

20 A. Approximately 35.

21 Q. And can you tell me how many of
22 those 35 are former officers, directors, or
23 employees of Highland Capital Management, L.P.?

24 A. I don't know the exact number.

25 Q. Is it more than 20?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Is it more than 30?

4 A. I don't know.

5 Q. Can you tell me what portion of
6 Skyview -- Skyview's revenue is derived from
7 entities that are directly or indirectly owned
8 or controlled by Jim Dondero?

9 MS. DANDENEAU: Mr. Morris, I mean,
10 you called Mr. Waterhouse here individually
11 for purposes of his testimony in connection
12 with the noticed litigation. I have given
13 you some leeway to ask him some background
14 information about Skyview Group, but this
15 is not a substitute for a deposition in
16 connection with any other pending disputes
17 that exist. And -- and we agreed to accept
18 the subpoena on the basis of he -- this is
19 testimony that he is giving in connection
20 with the noticed litigation.

21 I really think that you are now
22 going a little bit far afield from the
23 purpose of this deposition.

24 MR. MORRIS: Okay. It is -- I'm not
25 intending to use these -- the answers to

1 WATERHOUSE - 10-19-21

2 these questions for any purpose other than
3 this litigation. I think you understand
4 fully why I'm asking the questions, and I
5 just have a couple more, if you will bear
6 with me.

7 MS. DANDENEAU: Okay.

8 MS. DEITSCH-PEREZ: Can we have an
9 agreement that an objection by one is an
10 objection for any other party here?

11 MR. MORRIS: Sure. I would -- I
12 would encourage that, sure.

13 MS. DEITSCH-PEREZ: Thank you.

14 MR. MORRIS: It can't be sustained
15 or overruled more than one time, so...

16 Q. Mr. Waterhouse, can you answer my
17 question, please.

18 MS. DANDENEAU: Do you want to
19 repeat it, Mr. Morris, for his benefit?

20 MR. MORRIS: Sure.

21 Q. Can you -- can you tell me the
22 approximate portion of Skyview's revenue that
23 is derived from entities that are directly or
24 indirectly owned or controlled by Mr. Dondero?

25 A. I don't know the exact number.

1 WATERHOUSE - 10-19-21

2 Q. Is it more than 75 percent?

3 A. Yes.

4 Q. Is it more than 90 percent?

5 A. I don't know.

6 Q. Okay. Can I refer to Highland

7 Capital Management, L.P., as Highland?

8 A. Yes.

9 Q. All right. And you previously
10 served as Highland's CFO; correct?

11 A. Yes.

12 Q. When did you join Highland?

13 A. I don't recall the exact date.

14 Q. Can you tell me what year?

15 A. 2006.

16 Q. When did you -- in what year did you
17 become Highland's CFO?

18 A. I don't recall the exact date.

19 Q. I'm not asking you for the exact
20 date. I'm asking you if you recall the year in
21 which you were appointed CFO.

22 A. I don't recall the exact year.

23 Q. Can you tell me which years it is
24 possible that you were appointed to CFO of
25 Highland?

1 WATERHOUSE - 10-19-21

2 A. 2011 or 2012.

3 Q. Did you serve as Highland's CFO on a
4 continuous basis from in or around 2011 or 2012
5 until early 2021?

6 A. Yes.

7 Q. During that entire time you reported
8 directly to Jim Dondero; correct?

9 A. I -- I don't know.

10 Q. Is there anybody else you reported
11 to -- withdrawn.

12 Did you report to Mr. Dondero for
13 some portion of the time that you served as
14 CFO?

15 A. Yes.

16 Q. Is there a portion of time that you
17 don't recall who you reported to?

18 A. Yes.

19 Q. What portion of time do you have in
20 your mind when you can't recall who you
21 reported to?

22 A. From the 2011 to -- for
23 approximately a year or two.

24 Q. Okay. So is it fair to say that you
25 reported to Mr. Dondero in your capacity as CFO

1 WATERHOUSE - 10-19-21

2 from at least 2014 until the time you left
3 Highland?

4 MS. DANDENEAU: Objection to form.

5 A. I don't want to speculate the exact
6 or what year that changed or -- so I would like
7 to stick with my testimony.

8 Q. Can you recall when you began
9 reporting to Mr. Dondero?

10 A. I don't recall.

11 Q. Can you -- can you give me an
12 estimate of what year you think you might have
13 began reporting to Mr. Dondero?

14 A. I will go back to my prior
15 testimony.

16 Q. Okay. There is no -- you have no
17 ability to tell me when you began reporting to
18 Mr. Dondero.

19 Do I have that right?

20 MS. DANDENEAU: Objection to form.

21 A. I don't recall.

22 Q. Okay. Do you recall who you might
23 have reported to before you began reporting to
24 Mr. Dondero?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Who might you have reported to in
3 your capacity as CFO before you started
4 reporting to Mr. Dondero?

5 A. That would have been Patrick Boyce.

6 Q. Are you aware that Highland filed
7 for bankruptcy on October 19th, 2019?

8 A. Yes.

9 Q. And we refer to that as the petition
10 date?

11 A. Yes.

12 Q. Okay. Do you hold any professional
13 licenses, sir?

14 A. Yes.

15 Q. Can you tell me what professional
16 licenses you hold?

17 A. I'm a certified public accountant.

18 Q. Okay. Anything else?

19 A. No.

20 Q. Do you have any other professional
21 licenses or certificates?

22 A. When you say "professional license,"
23 that is not education?

24 Q. Tell me -- sure. Anything other
25 than a driver's license.

1 WATERHOUSE - 10-19-21

2 Do you have any other license or
3 certificate or certification?

4 A. Are you asking, like, where I went
5 to school and the --

6 Q. I am not. I am not. I didn't say
7 education. I didn't ask about degrees.

8 Do you know what a license is?

9 A. Well, yeah, I mean, a license is
10 something you get after you receive a certain
11 level of proficiency.

12 Q. Do you have any licenses or
13 certifications other than your CPA?

14 MS. DANDENEAU: Objection, form.

15 I assume you mean professional
16 licenses, Mr. Morris; correct?

17 Q. Can you answer my question, sir?

18 A. Mr. Morris, I'm thinking. I
19 don't -- I don't think I have any others.

20 Q. Are you familiar with an entity
21 called Highland Capital Management Fund
22 Advisors?

23 A. Yes.

24 Q. Were you ever -- can we refer to
25 that entity as HCMFA?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Were you ever employed by HCMFA?

4 A. Not that I recall.

5 Q. Were you ever -- did you ever hold
6 the title of an officer or director of HCMFA?

7 A. Yes.

8 Q. What title did you hold?

9 A. Treasurer.

10 Q. When did you become the treasurer of
11 HCMFA?

12 A. I don't recall.

13 Q. Can you tell me the year?

14 A. I don't -- I don't know the year.

15 Q. Can you approximate the year in
16 which you became the treasurer of HCMFA?

17 A. I don't know.

18 Q. Can you tell me if it was before or
19 after 2016?

20 A. I don't recall.

21 Q. Are you still the -- do you know if
22 you're still the treasurer of HCMFA today?

23 A. Today, I am the acting treasurer for
24 HCMFA.

25 Q. Is there a distinction between

1 WATERHOUSE - 10-19-21

2 treasurer and acting treasurer?

3 A. I said "acting treasurer" as I am an
4 employee of Skyview, as you previously
5 stated -- or asked.

6 Q. But you are the treasurer of HCMFA
7 today; correct?

8 A. I am -- I am the acting treasurer
9 for HCMFA.

10 Q. How did you become the treasurer of
11 HCMFA?

12 A. Are you asking how I became the
13 treasurer of HCMFA today?

14 Q. How did you become appointed to
15 serve as the treasurer of HCMFA?

16 A. Well, in -- in -- in what time
17 capacity?

18 Q. The first time that you were
19 appointed.

20 A. First time. I believe I was asked
21 to serve as treasurer for HCMFA the first time.

22 Q. By who? Who asked you to do that?

23 A. I don't recall.

24 Q. Is there anything that would refresh
25 your recollection as to who appointed you as

1 WATERHOUSE - 10-19-21

2 the treasurer of CF- -- HCMFA for the first
3 time?

4 A. I don't -- I mean, there would be
5 some documents, some legal documents. I don't
6 know where those are.

7 Q. How many times have you been
8 appointed the treasurer of HCMFA?

9 A. I don't know.

10 Q. Was it more than once?

11 A. I don't know.

12 Q. Can you tell me any period of time
13 since 2016 that you did not hold the title of
14 treasurer of HCMFA?

15 MS. DANDENEAU: Objection to form.

16 A. I don't recall.

17 Q. What are your duties and
18 responsibilities as the treasurer of HCMFA?

19 A. My duties are to do the best job
20 that I can as the -- as an accountant and
21 finance guy.

22 Q. What specific duties and
23 responsibilities do you have as the treasurer
24 of HCMFA?

25 A. My duties are to do the best job

1 WATERHOUSE - 10-19-21

2 that I can as the accounting and finance person
3 for HCMFA.

4 Q. As the accounting and finance person
5 for HCMFA, do you have any particular areas of
6 responsibility?

7 A. Yeah, it is to manage the accounting
8 and finance function for HCMFA.

9 Q. Would that include -- do you have
10 responsibility for overseeing HCMFA's annual
11 audit?

12 A. Can I please elaborate on my prior
13 question?

14 Q. Of course. You -- you are giving
15 answers. I'm asking questions.

16 A. Okay. Yes, so the -- it -- like I
17 said, it is to manage the accounting finance
18 aspect, but I am, as we discussed, the
19 treasurer. That is -- being treasurer is what
20 gives me that -- that management function.

21 Q. Does anybody report to you in your
22 capacity as treasurer of HCMFA?

23 A. I don't believe so.

24 Q. Does HCMFA have a chief financial
25 officer?

1 WATERHOUSE - 10-19-21

2 A. I don't -- I don't know.

3 Q. You don't know?

4 You're the treasurer of HCMFA but
5 you don't know if HCMFA has a chief financial
6 officer.

7 Do I have that right?

8 A. That's right.

9 Q. Okay. Have you heard of a company
10 called NexPoint Advisors?

11 A. Yes.

12 Q. We will refer to that as NexPoint.
13 Okay?

14 A. Okay.

15 Q. Were you ever employed by NexPoint?

16 A. I don't recall.

17 Q. Did you ever hold any title with
18 respect to the entity known as NexPoint?

19 A. Yes.

20 Q. What titles have you held in
21 relation to NexPoint?

22 A. Treasurer. I think it was only
23 treasurer.

24 Q. Can you tell me the approximate year
25 you became the treasurer of NexPoint?

1 WATERHOUSE - 10-19-21

2 A. I don't know.

3 Q. Are you still the treasurer of
4 NexPoint today?

5 A. I am the acting treasurer for
6 NexPoint.

7 Q. When did your title change from
8 treasurer to acting treasurer?

9 A. I don't know.

10 Q. Did your duties and responsibilities
11 change at all when your title was changed from
12 treasurer to acting treasurer?

13 A. I don't -- I don't believe so.

14 Q. Why did --

15 A. I still manage the finance and
16 accounting function for NexPoint.

17 Q. Why did your title change from
18 treasurer to acting treasurer?

19 A. I don't -- I'm using the term
20 "acting treasurer" as I'm a Skyview employee.
21 I don't -- I don't know -- again, I am a -- as
22 I am the Skyview employee.

23 Q. Okay.

24 A. And we -- we provide officer
25 services.

1 WATERHOUSE - 10-19-21

2 Q. And you serve as an officer of
3 HCMFA; correct?

4 A. I think we went over that with my
5 testimony. Yes, I'm the acting treasurer for
6 HCMFA.

7 Q. And you are an officer of NexPoint;
8 correct?

9 A. I think -- I am the acting treasurer
10 for NexPoint Advisors.

11 Q. And -- and who appointed you acting
12 treasurer of NexPoint Advisors?

13 A. I don't recall specifically.

14 Q. Do you have any recollection of who
15 might have appointed you the treasurer of
16 NexPoint?

17 A. I mean, it -- it -- I don't recall
18 exactly who it was.

19 Q. Who were the possibilities?

20 MS. DEITSCH-PEREZ: Object to the
21 form.

22 Q. You can answer.

23 A. Someone in the legal group for
24 NexPoint. The other officers as well.

25 Q. Have you heard of a company called

1 WATERHOUSE - 10-19-21

2 Highland Capital Management Services, Inc.?

3 A. Yes.

4 Q. We will refer to that as HCMS.

5 Okay?

6 A. HCMS. Okay.

7 Q. Were you ever employed by HCMS?

8 A. No.

9 Q. Have you ever held any titles in
10 relation to HCMF -- I apologize -- HCMS?

11 A. Yes.

12 Q. What titles have you held in
13 relation to HCMS?

14 A. Treasurer and acting treasurer.

15 Q. When did you first become treasurer
16 or acting treasurer of HCMS?

17 A. I don't recall the exact dates.

18 Q. Can you recall -- can you
19 approximate the year that you became the
20 treasurer of HCMS?

21 A. I don't -- I don't know.

22 Q. Are you still the treasurer of HCMS
23 today?

24 A. I am the acting treasurer for HCMS.

25 Q. And are your duties and

1 WATERHOUSE - 10-19-21

2 responsibilities as the acting treasurer for
3 HCMS and the acting treasurer for NexPoint the
4 same as your duties and responsibilities in
5 your role as the acting treasurer of HCMFA?

6 A. More or less.

7 Q. Have you ever heard of a company
8 called HCRE Partners, LLC?

9 A. Yes.

10 Q. And do you understand that that
11 entity is now known today as NexPoint Real
12 Estate Partners?

13 A. I did not know that.

14 Q. All right. Can we refer to HCRE
15 Partners as HCRE?

16 MS. DANDENEAU: Objection to form.

17 Did you mean NexPoint Real Estate
18 Partners, Mr. Morris?

19 MR. MORRIS: No.

20 MS. DANDENEAU: Oh.

21 MR. MORRIS: He said he wasn't
22 familiar that it was succeeded by that
23 entity. So --

24 MS. DANDENEAU: Okay.

25 MR. MORRIS: -- let's go with what

1 WATERHOUSE - 10-19-21

2 the witness knows.

3 Q. You're familiar with an entity
4 called HCRE Partners, LLC; correct?

5 A. Yes.

6 Q. Okay. So that is the entity that we
7 will refer to as HCRE. If you're aware of any
8 successor, that is great. If not, let's just
9 define it as such.

10 Have you ever been employed by HCRE
11 or any entity that you know to have succeeded
12 HCRE?

13 A. No.

14 Q. Did you ever serve as an officer or
15 director of HCRE or any successor?

16 A. Not that I recall.

17 Q. Okay. Can we refer to NexPoint and
18 HCMFA as the advisors?

19 A. Yes.

20 Q. In general, the advisors provided
21 investment advisory services to certain retail
22 funds; correct?

23 A. Yes.

24 Q. And we will refer to the retail
25 funds that are served by the advisors

1 WATERHOUSE - 10-19-21

2 collectively as the retail funds; is that okay?

3 A. Okay.

4 Q. Each of the retail funds is governed
5 by a board; correct?

6 A. Yes.

7 Q. And do you know the people who serve
8 on the boards of the retail funds?

9 MS. DANDENEAU: Objection to form.

10 A. I don't know all of them.

11 Q. Do you know whether the same people
12 serve on the board of each of the retail funds
13 as we've defined that term?

14 A. Which -- so when you say "retail
15 funds" -- again, I want to be -- what retail
16 funds are you referring to, because there are
17 -- there are several distinctions?

18 What retail funds are you using when
19 you refer to them?

20 Q. That is why -- that is why I tried
21 to define the terms. So let me do it again.

22 Retail funds for the purposes of
23 this deposition means any retail fund to which
24 either of the advisors provides advisory
25 services. Okay?

1 WATERHOUSE - 10-19-21

2 A. Okay.

3 Q. Okay. So do you know whether the
4 same people serve on the board of each of the
5 retail funds?

6 A. I don't know.

7 Q. Were you ever employed by any of the
8 retail funds?

9 A. No.

10 Q. No?

11 A. No.

12 Q. Okay. Do you have any title with
13 respect to any of the retail funds?

14 A. Yes.

15 Q. What titles do you hold --
16 withdrawn.

17 Do you have the same titles with
18 respect to all of the retail funds or do
19 they -- or just something else?

20 MS. DANDENEAU: Objection to form.

21 Q. Withdrawn.

22 Do you have the same title with
23 respect to each of the retail funds?

24 A. No.

25 Q. Tell me which title you have with

1 WATERHOUSE - 10-19-21

2 respect to each retail fund.

3 Actually, let's do it a different
4 way. I withdraw the question.

5 Can you give me one title you have
6 in relation to any retail fund?

7 A. Yes.

8 Q. What title -- what title can you
9 give me?

10 A. Principal executive officer.

11 Q. Do you serve as principal executive
12 officer for each of the retail funds?

13 A. No.

14 Q. Can you identify for me the retail
15 funds in which you serve as the principal
16 executive officer?

17 A. Yes. Highland Funds 1, Highland
18 Funds 2, Highland Income Fund, Highland Global
19 Allocation Fund.

20 Q. I'm sorry, you said "Global
21 Allocation Fund"?

22 A. Yes.

23 VIDEOGRAPHER: Excuse me,

24 Mr. Morris. This is the videographer. I'm
25 concerned about the lighting in the

1 WATERHOUSE - 10-19-21

2 witness' camera.

3 Do you want to go off the record and
4 make some adjustments?

5 MR. MORRIS: Sure, but just for this
6 purpose. I don't want to take a break. We
7 just started.

8 MS. DANDENEAU: Yeah, that is fine.
9 That is fine. We're going to put you on
10 mute.

11 MR. MORRIS: All right.

12 MS. DANDENEAU: I'm going to try to
13 open up some of the shades.

14 VIDEOGRAPHER: We're going off the
15 record at 10:08 a.m.

16 (Recess taken 10:08 a.m. to 10:11 a.m.)

17 VIDEOGRAPHER: We are back on the
18 record at 10:11 a.m.

19 Q. Mr. Waterhouse, when did you become
20 the principal executive officer of the four
21 retail funds that you just identified?

22 A. I don't recall.

23 Q. Do you recall the approximate year
24 that you became the principal executive officer
25 of the four funds?

1 WATERHOUSE - 10-19-21

2 A. 2021.

3 Q. Did you ever hold any title with
4 respect to any of the four funds you have just
5 identified other than principal executive
6 officer?

7 A. I don't recall.

8 Q. Is it possible that you held a
9 position or a title with the four funds you
10 just identified prior to 2021?

11 A. Yes.

12 Q. But you don't recall if you did or
13 not; do I have that right?

14 A. No. You -- I thought you asked, did
15 I hold other titles.

16 Q. Did you hold any title at the four
17 retail funds for which you now serve as
18 principal executive officer at any time prior
19 to 2021?

20 A. Yes.

21 Q. What titles did you hold?

22 A. I don't recall all the titles.

23 Q. Do you recall any of the titles?

24 A. Yes.

25 Q. What titles do you recall holding at

1 WATERHOUSE - 10-19-21

2 those four retail funds before 2021?

3 A. Principal executive officer.

4 Q. Were you the principal executive
5 officer of the four retail funds that you have
6 identified?

7 A. Sorry, could you repeat the
8 question?

9 Q. Were you the principal executive
10 officer for each of the four retail funds that
11 you have identified?

12 A. Yes.

13 Q. When did you become the principal
14 executive -- withdrawn.

15 Can you give me the approximate year
16 that you became the principal executive officer
17 for each of the four retail funds you've
18 identified?

19 A. I don't recall.

20 Q. What are your duties and
21 responsibilities as the principal executive
22 officer of these four retail funds?

23 A. It is to manage the finance and
24 accounting positions.

25 Q. So at the same time you serve as the

1 WATERHOUSE - 10-19-21

2 treasurer of the advisors, you also serve as
3 the principal executive officer of these four
4 retail funds; correct?

5 A. Yes.

6 Q. Did you ever hold any title with
7 respect to any other retail fund?

8 A. Not that I recall.

9 Q. During the period that you served as
10 Highland's CFO, from time to time Highland
11 loaned money to certain of its officers and
12 employees; correct?

13 A. Yes.

14 Q. During the period that you served as
15 Highland's CFO, from time to time Highland
16 loaned money to certain --

17 A. Let me -- let me retract that,
18 sorry, that -- you asked during the time I was
19 CFO, Highland loaned moneys to employees. I
20 don't -- I don't recall that during my tenure
21 of CFO.

22 Q. You have no recollection during the
23 time that you were the CFO of Highland of
24 Highland ever loaning any money to any officer
25 or director of Highland?

1 WATERHOUSE - 10-19-21

2 A. I don't recall during my tenure of
3 Highland or my -- as CFO of Highland -- yeah,
4 if there are any loans as CFO of Highland.

5 Q. I'm just talking about officers and
6 employees right now. You have no recollection
7 of Highland ever making a loan to any of its
8 officers or employees during the time that you
9 served as CFO. Do I have that right?

10 MS. DANDENEAU: Objection to form.

11 A. So I thought you were saying
12 officers and employees as CFO, right, so there
13 were -- I mean, okay, yes.

14 Q. I would ask you to listen carefully
15 to my question. If I -- if I'm not clear, let
16 me know, but I'm really trying to be as clear
17 as I can.

18 A. I'm listening as carefully as I can,
19 and you are asking very specific questions in a
20 timeline. And I'm trying to answer your
21 questions as specifically as I can, and I
22 apologize if -- if I'm going back. I am -- you
23 are asking very specific questions. Thank you.

24 Q. During the period that you served as
25 Highland's CFO, from time to time Highland

1 WATERHOUSE - 10-19-21

2 loaned money to certain corporate affiliates;
3 correct?

4 MS. DANDENEAU: Objection to form.

5 A. What are corporate affiliates?

6 Q. How about the ones that are in
7 Highland's audited financial statements under
8 the section entitled Loans to Affiliates. Why
9 don't we start with those. Do you have any
10 understanding of what the phrase "affiliates"
11 means?

12 MS. DANDENEAU: Objection to form.

13 A. I understand what affiliates are,
14 yet affiliates can have different meanings in
15 different contexts, so...

16 Q. Why don't you -- why don't you tell
17 me what your understanding of the term
18 "affiliate" is in relation to Highland Capital
19 Management, L.P.

20 A. Is that a -- it depends on the
21 context.

22 Q. How about the context of making
23 loans?

24 MS. DANDENEAU: Objection to form.

25 A. I didn't make the determination of

1 WATERHOUSE - 10-19-21

2 who an affiliate was or is at the time those --
3 I didn't -- that wasn't my job to make a
4 determination of who an affiliate is.

5 Q. All right. So as the CFO of
6 Highland, do you have any ability right now to
7 tell me which companies that were directly or
8 indirectly owned and/or controlled by
9 Mr. Dondero in whole or in part received loans
10 from Highland Capital Management, L.P.?

11 MS. DANDENEAU: Objection to form.

12 MS. DEITSCH-PEREZ: Objection, form.

13 A. Yes.

14 Q. Okay. Identify every entity that
15 you can think of that was directly or
16 indirectly owned and/or controlled by
17 Mr. Dondero in whole or in part that received a
18 loan from Highland Capital Management, L.P.

19 MR. RUKAVINA: Objection, legal
20 conclusion.

21 A. NexPoint Advisors, Highland Capital
22 Management Fund Advisors, HCM Services,
23 Dugaboy. Sorry, I don't think -- Dugaboy
24 doesn't fit that definition. You said owned
25 and controlled. I don't think that that

1 WATERHOUSE - 10-19-21

2 definition --

3 Q. I said owned and/or controlled.

4 A. I don't -- again, I'm not -- I'm not
5 the legal expert. I don't think it controls --
6 he controls Dugaboy, so again, I'm not the
7 legal person.

8 Q. I'm not asking you for a legal
9 conclusion, sir. I'm asking you for your
10 knowledge, okay, as the CFO -- the former CFO
11 of Highland Capital Management, other than
12 NexPoint, HCMFA, and HCMF -- HCMS, can you
13 think of any other entities that were owned
14 and/or controlled directly or indirectly in
15 whole or in part by Jim Dondero who received a
16 loan from Highland Capital Management, L.P.?

17 MS. DANDENEAU: Objection to form.

18 A. HCRE.

19 Q. Any others?

20 A. That is -- that is all I can think
21 of.

22 Q. And you're aware that from time to
23 time while you were the CFO, Highland loaned
24 money to Jim Dondero; correct?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Can we refer to the four
3 entities that you just named and Mr. Dondero as
4 the affiliates?

5 A. So that would be Jim Dondero,
6 NexPoint Advisors, Highland Capital Management
7 Fund Advisors, and HCRE.

8 Q. And HCMS?

9 A. And HCMS, okay.

10 Q. And can we refer to the loans that
11 were given to each of those affiliates as the
12 affiliate loans?

13 A. Yes.

14 Q. And is it fair to say that each of
15 the affiliates were the borrowers under the
16 affiliate loans as we're defining the term?

17 MR. RUKAVINA: Objection, legal
18 conclusion.

19 A. The borrowers are whoever were on
20 the notes. I don't -- I don't know. I'm not
21 the legal person.

22 Q. But you --

23 A. I don't know.

24 Q. You do know, as Highland's former
25 CFO, that each of the affiliates that you have

1 WATERHOUSE - 10-19-21

2 identified tendered notes to Highland; correct?

3 MR. RUKAVINA: Hey, John, will you
4 just give me a running objection to legal
5 conclusion to HCM --

6 MR. MORRIS: No. No, if you want to
7 object --

8 MR. RUKAVINA: I will object every
9 time. Object to legal conclusion.

10 MR. MORRIS: That is fine.

11 A. Sorry, can you repeat the question?

12 Q. Are you aware that each of the --
13 that each of the affiliates, as we have defined
14 the term, gave to Highland a promissory note in
15 exchange for the loans?

16 MR. RUKAVINA: Objection to the
17 extent that calls for a legal conclusion.

18 A. I don't.

19 Q. No, you don't know that?

20 A. No, they didn't -- you said they
21 exchanged a promissory note for a loan. I
22 don't -- I don't understand that question, so I
23 said no.

24 Q. At the time of the bankruptcy
25 filing, did Highland have in its possession

1 WATERHOUSE - 10-19-21

2 promissory notes that were signed by each of
3 the affiliates?

4 A. Yes.

5 Q. To the best of your knowledge,
6 during the time that you served as Highland's
7 CFO, did Highland disclose to its outside
8 auditors all of the loans that were made to
9 affiliates?

10 MR. RUKAVINA: Objection, that calls
11 for a legal conclusion.

12 MS. DEITSCH-PEREZ: I also couldn't
13 hear you, John, because there was some
14 garbling on -- on the -- on the call.

15 MR. MORRIS: Folks, I've got to tell
16 you this is not going well, and I'm
17 reserving my right --

18 MS. DANDENEAU: John, it was just
19 the end of that question. It was just the
20 end of that question. I couldn't hear it
21 either. Sorry, if you could repeat it,
22 please.

23 MR. MORRIS: That is less than an
24 hour into this, but folks are trying to run
25 out the clock, and so I'm just going to

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2 state that now.

3 MS. DANDENEAU: You know, and,
4 Mr. Morris, I really object to that. I
5 mean --

6 MR. MORRIS: Okay.

7 MS. DANDENEAU: -- Mr. Waterhouse
8 just told you he's trying to listen to your
9 questions and answer them carefully, and
10 you have no basis for saying that.

11 MR. MORRIS: Okay.

12 MS. DANDENEAU: This does not --
13 this is not an experienced witness, so he's
14 trying to do the best he can.

15 Q. Mr. Waterhouse, during the time that
16 you served as Highland's CFO, did Highland
17 disclose to its outside auditors all of the
18 loans that it made to each of the affiliates
19 that you have identified?

20 MR. RUKAVINA: Objection, legal
21 conclusion.

22 A. Yes.

23 Q. To the best of your knowledge, while
24 you were Highland's CFO, were all of the
25 affiliate loans described in Highland's audited

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2 financial statements?

3 MR. RUKAVINA: Objection, legal
4 conclusion.

5 A. When an audit was performed, any
6 loans that were made by Highland to the
7 affiliates were disclosed to auditors.

8 Q. Are you aware of any loan that was
9 made to any affiliate that was not disclosed to
10 the auditors?

11 A. I'm not aware.

12 Q. To the best of your knowledge, did
13 each of the affiliates who were --
14 (inaudible) -- loaned from Highland execute a
15 promissory note in connection with that loan?

16 MR. RUKAVINA: Objection, legal
17 conclusion.

18 A. Sorry, you -- halfway through the
19 question it got muffled.

20 Can you repeat that again?

21 Q. To the best of your knowledge, did
22 every affiliate execute a promissory note in
23 connection with each loan that it obtained from
24 Highland?

25 MR. RUKAVINA: Objection, legal

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2 conclusion.

3 A. Yes.

4 Q. You are not aware of any loan that
5 any affiliate ever obtained from Highland where
6 the affiliate did not give a promissory note in
7 return; is that fair?

8 A. Yes, I'm not aware.

9 Q. And to the best of your knowledge,
10 did Highland loan to each affiliate an amount
11 of money equal to the principal amount of each
12 promissory note?

13 MR. RUKAVINA: Objection, legal
14 conclusion.

15 A. Yes.

16 Q. During the time that you served as
17 CFO, did Highland ever loan money to
18 Mark Okada?

19 A. I -- I don't recall.

20 Q. Did you ever see any promissory
21 notes executed by Mark Okada?

22 A. I don't recall.

23 Q. Do you know if Highland ever forgave
24 any loan that it ever made to Mr. Okada?

25 A. I don't recall.

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2 Q. Do you recall if Mr. Okada paid back
3 all principal and interest due and owing under
4 any loan he obtained from Highland?

5 MS. DEITSCH-PEREZ: Objection to
6 form.

7 MS. DANDENEAU: Objection to form.

8 A. I don't recall.

9 Q. Do you recall whether -- during your
10 time as CFO, whether Highland ever loaned money
11 to Jim Dondero?

12 A. Yes.

13 Q. To the best of your knowledge, did
14 Mr. Dondero sign and deliver to Highland a
15 promissory note in connection with each loan
16 that he obtained from Highland?

17 A. If you are referring to the
18 promissory notes that, you know, part of
19 Highland's records, yes.

20 Q. Okay. You're not aware of any loan
21 that Mr. Dondero took from Highland that wasn't
22 backed up by -- by a promissory note with a
23 face -- with a principal amount equal to the
24 amount of the loan; correct?

25 A. Am I aware that Jim Dondero took a

1 WATERHOUSE - 10-19-21

2 loan?

3 Q. Without giving a -- let me ask a
4 better question. I'm sorry, Mr. Waterhouse.

5 Are you aware of any loan that
6 Mr. Dondero obtained from Highland where he
7 didn't give a promissory note in return?

8 A. I'm not aware.

9 Q. During the time that you served as
10 Highland's CFO, did Highland ever forgive any
11 loans, in whole or in part, that it made to
12 Mr. Dondero?

13 A. Not that I'm aware.

14 Q. At the time that you served as
15 Highland's CFO, did Highland ever forgive any
16 loan, in whole or in part, that it made to any
17 affiliate as we've defined the term today?

18 A. Not that I'm aware.

19 Q. During the time that you served as
20 Highland's CFO, did Highland ever forgive, in
21 whole or in part, any loan that it ever made to
22 any officer or employee?

23 A. Highland forgave loans to officers
24 and employees. It may not have been at the
25 time when my title was CFO.

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2 Q. Okay. And so I appreciate the
3 distinction.

4 Is it fair to say that, to the best
5 of your knowledge, Highland did not forgive a
6 loan that it made to an officer or employee
7 after 2013?

8 MS. DANDENEAU: Objection to form.

9 A. I don't recall.

10 Q. To the best of your knowledge, did
11 Highland disclose to its auditors every
12 instance where it forgave, in whole or in part,
13 a loan that it had made to one of its officers
14 or employees?

15 A. No.

16 Q. Can you think of -- can you -- can
17 you identify any loan to an officer or employee
18 that was forgiven by Highland, in whole or in
19 part, that was not disclosed to Highland's
20 outside auditors?

21 A. Look, I don't recall all of the
22 loans and the loan forgiveness. I just know as
23 part of the audit process there is a
24 materiality concept.

25 So if there were loans to employees

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2 that were of -- you know, that were deemed
3 immaterial, those items may not have been
4 disclosed by the team to the auditors.

5 Q. I appreciate that.

6 Do you have an understanding as to
7 what the level of materiality was?

8 A. I don't recall.

9 Q. As the CFO of Highland, to the best
10 of your knowledge, did Highland disclose to its
11 outside auditors every loan that was forgiven,
12 in whole or in part, that was material as that
13 term was defined by the outside auditors?

14 A. Yes.

15 Q. And do you recall where -- do you
16 recall where the definition of materiality can
17 be found for -- for this particular purpose?

18 MS. DANDENEAU: Objection to form.

19 A. No. You -- I don't determine
20 materiality.

21 Q. Okay. I'm just asking you if you
22 can help me understand where it is, but I think
23 we will find it in a few minutes.

24 You are aware that Highland has
25 commenced lawsuits against each of the

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2 affiliates, as we've defined the term, to
3 collect under certain promissory notes; is that
4 right?

5 A. Yes.

6 Q. And are you familiar with the notes
7 that are issue -- at issue in the lawsuits?

8 MS. DANDENEAU: Objection to form.

9 A. Generally familiar.

10 Q. Can we refer to the lawsuits that
11 Highland has commenced against the affiliates
12 collectively as the lawsuits?

13 A. Yes. And, again, the affiliates are
14 NexPoint, HCMFA, HCMS, and HCRE.

15 Q. And Mr. Dondero?

16 A. Okay. See, that is a new -- and now
17 Mr. Dondero is included in your affiliate
18 definition.

19 Q. I just --

20 A. I thought affiliates -- I thought
21 affiliates were just the four prior entities,
22 so I just want to be clear.

23 Q. I appreciate that. So let's --
24 let's keep them separate and let's refer to the
25 four corporate entities as the affiliates, and

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2 Mr. Dondero we will call Mr. Dondero. Okay?

3 A. Okay. Thank you. As you can see,
4 Mr. Morris, there is a lot of entities -- a lot
5 here. I just want to be clear.

6 Q. Okay. Now, the affiliates of
7 Mr. Dondero signed promissory notes that are
8 not subject to the lawsuit.

9 Do you understand that?

10 MS. DANDENEAU: Objection to form.

11 A. The affiliates and Mr. Dondero
12 signed --

13 Q. You know what? I will skip it.
14 That is okay. Okay.

15 From time to time while you were
16 Highland's CFO, payments were applied against
17 principal and interests that were due under the
18 notes that were tendered by the affiliates and
19 Mr. Dondero; correct?

20 MR. RUKAVINA: Objection to the
21 extent that calls for a legal conclusion.

22 A. Yes.

23 Q. Did Highland have a process where --
24 whereby payments would be applied against
25 principal and interest against the notes that

1 WATERHOUSE - 10-19-21

2 were given by the affiliates and Mr. Dondero?

3 A. Yes.

4 Q. Can you describe the process for me?

5 A. The process, payment should be
6 applied as laid out in the -- in the promissory
7 note.

8 Q. From time to time were payments made
9 that were not required under the promissory
10 notes?

11 MS. DANDENEAU: Objection to form.

12 A. Yes.

13 Q. Who was responsible for deciding
14 when and how much the payments would be made
15 with respect to each of the notes that were
16 issued by the affiliates and Mr. Dondero?

17 A. Who was responsible for deciding how
18 much was paid prior to the due date?

19 Q. Yes.

20 A. I don't know.

21 Q. Did you approve of each payment that
22 was made against principal and interest on the
23 notes that were given by the affiliates and
24 Mr. Dondero?

25 MS. DANDENEAU: Objection to form.

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2 A. Did I approve the payments? I
3 approve -- I approve -- if there was cash -- if
4 there was cash being repaid on a note payment,
5 yes, I approved in the general sense of being
6 made aware of the payment and the amount.

7 Q. And are you the person who
8 authorized Highland's employees to effectuate
9 those payments?

10 A. Yes.

11 Q. When you gave the instruction to
12 effectuate the payment, did you obtain
13 Mr. Dondero's prior approval?

14 A. I mean, it -- I mean, it -- it
15 depends.

16 Q. Can you think of any instance where
17 you directed Highland's employees to make a
18 payment of principal or interest against any
19 note that was tendered by an affiliate or
20 Mr. Dondero that Mr. Dondero did not approve of
21 in advance?

22 A. I can't recall specifically.

23 Q. Can you identify -- withdrawn.

24 Did Mr. Dondero ever tell you that a
25 payment that was made against principal and

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2 interest due under one of the notes that was
3 tendered by an affiliate or himself should not
4 have been made?

5 A. Yes.

6 Q. Can you identify the payment for me?

7 A. It would be for -- for NexPoint
8 Advisors.

9 Q. Okay. And when did Mr. Dondero tell
10 you that a payment that you had initiated on
11 behalf of NexPoint should not have been made?

12 A. I wasn't initiating payment. It was
13 in the context of the -- I think you used this
14 term, "the advisors," so NexPoint Advisors and
15 Highland Capital Management Fund Advisors had
16 overpaid on certain agreements with Highland
17 Capital Management, L.P. And as a part of that
18 process, the advisors -- what I was told at the
19 time were in talks and negotiations and
20 discussions with Highland Capital Management,
21 L.P., on offsets in relation to those
22 overpayments.

23 Q. When did this conversation take
24 place?

25 MS. DANDENEAU: Objection to form.

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2 A. I don't recall specifically.

3 Q. Do you recall what year it was?

4 A. Yes.

5 Q. What year did the conversation with
6 Mr. Dondero take place that you just described?

7 A. 2020.

8 Q. Okay. Do you remember if it was
9 December 2020?

10 A. It -- it -- I don't -- I don't
11 recall what month specifically, but it would
12 have been November or December.

13 Q. And we're talking here about a
14 payment of principal and/or interest that was
15 due -- withdrawn.

16 We're talking here about a payment
17 of principal and interest that was applied
18 against NexPoint's note; correct?

19 MS. DANDENEAU: Objection to form.

20 A. I don't recall what that payment
21 consisted of.

22 Q. Is it possible that the payment you
23 have in mind related to the shared services
24 agreement?

25 MS. DANDENEAU: Objection to form.

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2 A. No.

3 Q. Are you certain that the payment --
4 that the payment that you have in mind related
5 to the promissory note that NexPoint issued in
6 favor of Highland?

7 MS. DANDENEAU: Objection to form.

8 A. Yes.

9 Q. Okay. Other than that one payment,
10 can you identify any other instance where
11 Mr. Dondero told you that a payment should not
12 have been applied against principal and
13 interest under any promissory note tendered by
14 any affiliate or Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Objection to
17 form.

18 A. Not that I recall.

19 Q. Thank you very much.

20 Do you know if Mr. Dondero approved
21 in advance of each loan made to each affiliate
22 and himself during the time that you were the
23 CFO?

24 MS. DEITSCH-PEREZ: Object to the
25 form.

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2 A. Yes, generally.

3 Q. Can you identify any loan that was
4 ever made to an affiliate or to Mr. Dondero
5 that Mr. Dondero did not approve of in advance?

6 A. Other than the ones that are in
7 dispute, I'm not aware.

8 Q. Do you believe that Mr. Dondero did
9 not approve of each of the loans that are in
10 dispute in advance of the time that the loan
11 was made?

12 MS. DANDENEAU: Objection to form.

13 A. Given what is in the dispute, you
14 know, and -- and -- and the way things might --
15 yeah, I mean...

16 Q. I am not asking about the dispute,
17 and it was probably my mistake to follow you
18 there.

19 Were you aware of every loan made by
20 Highland to each of its affiliates and
21 Mr. Dondero while you were the CFO at the time
22 each loan was made?

23 A. Was I aware of every loan, yes.

24 Q. Okay. And if you put yourself back
25 in time, do you recall that any of the loans

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2 that were made to one of the affiliates or
3 Mr. Dondero during the time that you were the
4 CFO was made without Mr. Dondero's prior
5 knowledge and approval?

6 A. Not that I recall.

7 Q. Thank you. In fact, do you -- as
8 the CFO, would you have allowed Highland to
9 loan money to an affiliate or to Mr. Dondero
10 without obtaining Mr. Dondero's prior approval?

11 MS. DANDENEAU: Objection to form.

12 A. I can't -- there was so many times
13 over the years, I can't speak for every single
14 one, but generally, yes, I -- I spoke to him.

15 Q. You -- you never -- you never --
16 withdrawn. I will just take that.

17 Can you recall any payment that was
18 ever made against principal and interest on a
19 note that was issued in favor of Highland by an
20 affiliate or Mr. Dondero that you personally
21 did not know about in advance?

22 A. There are so many through the years,
23 I don't -- I don't -- I don't recall every
24 single one.

25 Q. Okay. Can you identify any payment

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2 that was made against principal and interest on
3 any note tendered by any affiliate or
4 Mr. Dondero that you didn't know about in
5 advance?

6 A. I don't recall.

7 Q. Other than Mr. Dondero -- withdrawn.

8 Did anybody at Highland have the
9 authority to make a payment against principal
10 and interest due under a loan given to the
11 affiliates and Mr. Dondero without your
12 knowledge and approval?

13 MS. DANDENEAU: Objection to form.

14 A. Sorry, there was -- to make a
15 payment on an affiliate loan, what you are
16 saying would it require my knowledge and
17 approval, yes.

18 Q. Okay. I appreciate that. Thank
19 you.

20 Did anybody at Highland have the
21 authority, to the best of your knowledge, to
22 effectuate a loan to an affiliate without
23 Mr. Dondero's prior knowledge and approval?

24 MS. DANDENEAU: Objection to form.

25 A. I can't speak for all, but

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2 generally, yes.

3 Q. Did you personally communicate with
4 Mr. Dondero to let him know each time a payment
5 of principal or interest was being made against
6 any note that was tendered by an affiliate or
7 Mr. Dondero to Highland?

8 A. I don't -- are you saying, did I let
9 Mr. Dondero know if a payment was made on any
10 affiliate or loan to Mr. Dondero? I mean,
11 not -- not every -- no.

12 Q. Let me ask it this way: Did you
13 have a practice of informing Mr. Dondero when
14 payments were made against principal and
15 interest on any note that was tendered by an
16 affiliate or Mr. Dondero?

17 MS. DEITSCH-PEREZ: Objection to
18 form.

19 MS. DANDENEAU: Objection to form.

20 A. No, I did not.

21 Q. Did Mr. Dondero ever tell you that a
22 payment of principal or interest had been made
23 against a note that was tendered by an
24 affiliate or himself that he had been unaware
25 of?

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2 A. Not that I recall.

3 Q. Are you aware that Mr. Dondero and
4 the affiliates -- withdrawn.

5 Are you aware that Mr. Dondero
6 NexPoint, HCRE, and HCMS all contend that they
7 do not have to pay on any of the notes they
8 issued because they are subject to an oral
9 agreement between Mr. Dondero and Nancy
10 Dondero, in her capacity as the trustee of the
11 Dugaboy Investment Trust?

12 MS. DANDENEAU: Objection to form.

13 A. I didn't -- I didn't -- I didn't
14 know that it was all notes.

15 Q. Okay. Are you -- did you ever learn
16 that there was an oral agreement between Jim
17 Dondero and Nancy Dondero pertaining to any
18 notes issued by any affiliate or Mr. Dondero?

19 MS. DEITSCH-PEREZ: Object to the
20 form.

21 A. Yes.

22 Q. Do you have any understanding as to
23 the terms of that agreement?

24 A. Yes.

25 Q. What is your understanding of the

1 WATERHOUSE - 10-19-21

2 terms of the agreement?

3 A. That there were certain milestones
4 that had to be reached.

5 Q. Do you have any understanding of the
6 terms of the agreement between Mr. Dondero and
7 Nancy Dondero concerning any of the notes
8 issued by the affiliates or Mr. Dondero other
9 than that there have to be milestones reached?

10 MS. DEITSCH-PEREZ: Object to the
11 form.

12 A. There are milestones, I found out
13 yesterday, or there was some --

14 MS. DANDENEAU: Okay. I'm just
15 going to object to the extent that you
16 learned anything in conversations with
17 counsel, please don't reveal -- that is
18 privileged, and don't reveal any privileged
19 communications.

20 THE WITNESS: Okay.

21 A. So I'm not aware of anything else.

22 Q. Do you know what the milestones
23 were?

24 MS. DANDENEAU: Objection to form.

25 A. I don't.

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2 Q. Do you know anything about -- do you
3 know what promissory notes the agreement
4 covered?

5 A. I don't.

6 Q. Do you know if -- if Jim and Nancy
7 Dondero entered into one agreement or more than
8 one agreement?

9 MS. DEITSCH-PEREZ: Object to the
10 form.

11 A. I don't know.

12 Q. Do you know if the agreement is in
13 writing?

14 A. I don't know.

15 Q. How did you learn of the existence
16 of the agreement?

17 MS. DANDENEAU: Objection to form.
18 Again --

19 A. I don't -- I don't recall who told
20 me.

21 Q. You have no recollection of who told
22 you about this agreement between Jim and Nancy
23 Dondero?

24 MS. DEITSCH-PEREZ: Object to the
25 form.

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2 A. I don't recall.

3 Q. Do you recall how you learned of the
4 agreement?

5 Was it in a meeting? Was it in a
6 phone call? Was it in an email?

7 A. I don't recall.

8 Q. Do you recall when you learned of
9 the agreement?

10 A. Not specifically.

11 Q. Do you recall what year you learned
12 of the agreement?

13 A. In -- look, I mean, there are so
14 many notes. I may be getting -- I believe it
15 was 2020.

16 Q. All right. I'm not asking about
17 notes, sir. I'm asking about the agreement
18 that you testified you knew about between Jim
19 and Don- -- Nancy Dondero. Okay.

20 Do you understand my question now?
21 Should I ask my question again?

22 A. Yeah, sure. Go ahead.

23 Q. I'm going to use the word
24 "agreement" to refer to the agreement that
25 Mr. Dondero and Nancy Dondero entered into

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2 where you understood that certain milestones
3 had to be reached. Okay?

4 A. Uh-huh.

5 MS. DANDENEAU: Objection.

6 MS. DEITSCH-PEREZ: Object to the
7 form.

8 MR. MORRIS: Just defining a term,
9 what is the objection.

10 MS. DEITSCH-PEREZ: The objection --

11 MR. MORRIS: I will move on. I will
12 move on.

13 MS. DEITSCH-PEREZ: John --

14 Q. Sir, are you okay with that
15 definition of agreement?

16 A. Okay.

17 Q. Okay. So you don't recall who --
18 who informed you of the existence of the
19 agreement; is that right?

20 A. I don't recall.

21 Q. You don't recall who told you the
22 terms of the agreement.

23 Do I have that right?

24 A. Correct.

25 Q. And you don't recall if you learned

1 WATERHOUSE - 10-19-21

2 about the agreement in a meeting, through an
3 email, or through a phone call.

4 Do I have that right?

5 A. I don't recall.

6 Q. Can you tell me when you learned of
7 the agreement?

8 A. I don't -- I don't -- I don't
9 remember specifically.

10 Q. Can you tell me if you learned of
11 the agreement before or after the petition
12 date?

13 A. It would have been -- it would have
14 been after.

15 Q. Can you tell me if you learned of
16 the agreement before or after January 9th,
17 2020?

18 A. It would have been after.

19 Q. Can you tell me if you learned of
20 the agreement before or after you left Highland
21 Capital Management in February of 2021?

22 A. I don't -- I don't -- I don't know.

23 Q. It is possible that you learned of
24 it while you were a Highland employee.

25 Do I have that right?

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2 A. I don't remember the -- I mean, it
3 was sometime in 2021. I don't remember when.

4 Q. All right. So to the best of your
5 recollection, it was in 2021 but you don't
6 recall if it was before or after you ceased to
7 be a Highland employee.

8 Do I have that right?

9 A. Yeah, I mean, it was -- it was
10 likely after I was -- after I left Highland
11 because, if I put myself back into the last
12 days of -- of 2021, it was -- you know, the
13 communications with Mr. Dondero were -- were --
14 were -- there weren't as many communications
15 because of the circumstances.

16 Q. And so based on that you believe
17 that it is most likely that you learned of this
18 agreement sometime after you left Highland
19 employment?

20 A. I wouldn't use the term "most
21 likely." I don't recall specifically. I don't
22 recall.

23 Q. Do you recall ever telling Jim Seery
24 about this agreement?

25 A. No, I don't -- I didn't tell

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2 Jim Seery.

3 Q. Did you tell anybody at DSI about
4 this agreement?

5 A. No.

6 Q. Did you tell any of Highland's
7 independent directors about this agreement?

8 A. No.

9 Q. Did you tell anybody at Pachulski
10 Stang Ziehl & Jones about this agreement?

11 A. No.

12 Q. Did you tell any employee of
13 Highland about this agreement?

14 A. No.

15 MS. DANDENEAU: Mr. Morris, it has
16 been an hour and a half. Is this a good
17 time for a break?

18 MR. MORRIS: Sure.

19 Q. Mr. Waterhouse, I will just remind
20 you that during the break please don't speak
21 with anybody about the deposition, the
22 substance of your testimony or anything else
23 concerning the deposition. Okay?

24 A. Yes.

25 MR. MORRIS: So it is 11:02. We're

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2 at 11:02 your time. Let's come back, I
3 guess, at 15 -- at 11:15 your time.

4 VIDEOGRAPHER: We're going off the
5 record at 11:02 a.m.

6 (Recess taken 11:02 a.m. to 11:20 a.m.)

7 VIDEOGRAPHER: We are back on the
8 record at 11:20 a.m.

9 Q. Mr. Waterhouse, did you speak with
10 anybody during the break about this deposition?

11 A. No.

12 MS. DANDENEAU: Other than -- other
13 than his counsel.

14 Q. Did you speak to your counsel about
15 the substance of your deposition today?

16 A. No, I didn't bring it up.

17 Q. I didn't ask you if you brought it
18 up. I asked you if you had any conversation
19 with your lawyer about the substance of your
20 deposition.

21 MS. DANDENEAU: Yes, he did.

22 Q. Can you tell me what the -- you
23 discussed?

24 MS. DANDENEAU: No, I object to
25 that. He's not going to answer. That is a

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2 privileged conversation.

3 MR. MORRIS: So I just want to make
4 sure that I understand. During the break
5 you spoke with your client about the
6 substance of this deposition; is that
7 right?

8 MS. DANDENEAU: Yes, John.

9 MR. MORRIS: And you refuse -- you
10 refuse to let your client tell me what was
11 discussed; is that right?

12 MS. DANDENEAU: That's correct.

13 MR. MORRIS: You know, I had given
14 the instruction prior to the break not to
15 speak with counsel. I would have
16 appreciated --

17 MS. DANDENEAU: No, you didn't --
18 actually, that is not true, Mr. Morris.
19 You said not to speak with anyone. We
20 never have interpreted that to mean
21 conversations with counsel. That's never
22 been -- I have never, ever heard that
23 instruction.

24 MR. MORRIS: Okay. We will -- we
25 will -- we will deal with it when and if we

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2 have to.

3 Q. Mr. Waterhouse, after learning about
4 the agreement, did you ask anybody if the
5 agreement was reflected in a writing?

6 MS. DANDENEAU: Objection to form.

7 A. No.

8 Q. Did you ask anybody if the terms of
9 the agreement were memorialized anywhere?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: What is the --

12 A. No.

13 MS. DANDENEAU: Well, because you
14 keep talking about this agreement and I --
15 I -- I think, Mr. Morris, that is really
16 not clear what you mean by "the agreement."
17 And maybe you can just go back and restate
18 what that is.

19 MR. MORRIS: Okay. Your client has
20 agreed with me twice on the definition, but
21 I will try one more time.

22 Q. Mr. Waterhouse, do you understand
23 that when I use the term "agreement," I'm
24 referring to the agreement between Jim and
25 Nancy Dondero concerning certain promissory

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2 notes where you learned that one of the terms
3 of the agreement was milestones reached?

4 A. Okay.

5 Q. And did you understand that that was
6 the -- the agreement that we were referring to
7 every time we used the word "agreement" in this
8 deposition?

9 A. I don't know anything about this
10 agreement. So, look, I do -- it -- I don't
11 know whether --

12 Q. Let's -- let's try this again.

13 A. Yeah. Look, I don't know what this
14 agreement relates.

15 MS. DEITSCH-PEREZ: John, John --

16 Q. Let me try --

17 MS. DEITSCH-PEREZ: John, please let
18 the witness finish.

19 MR. MORRIS: Please stop. Please
20 stop. Please stop talking.

21 MS. DEITSCH-PEREZ: No, you stop.
22 Let the witness --

23 MR. MORRIS: Stop talking.

24 MS. DEITSCH-PEREZ: -- finish -- you
25 interrupted him.

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2 MR. MORRIS: You know what, you
3 guys, this is really wrong. It is really,
4 really wrong. Okay?

5 I had the witness agree not once,
6 but twice to the definition of agreement.
7 Okay? I'm going to try and do it a third
8 time.

9 MS. DANDENEAU: No, but, please,
10 John, really --

11 MR. MORRIS: No, please stop
12 talking. Please. It is my deposition.
13 Object to questions.

14 MS. DANDENEAU: No, but also you
15 instructed him that -- that if you were
16 going -- if you were interrupting him, that
17 he should remind you that you're
18 interrupting him and -- and --

19 MR. MORRIS: Let him do that. Let
20 him do that.

21 MS. DANDENEAU: Okay. Well, you --

22 MR. MORRIS: Please stop talking.

23 A. Okay. I don't know any of the
24 details of these agreements. I don't know
25 anything about them. I heard -- someone -- I

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2 don't know who, I don't know when, as you
3 asked, sometime in '21, someone told me about
4 this -- or I don't honestly know -- I don't
5 even recall exactly how I was made aware of
6 this, but I was. I don't know -- I don't know
7 any of these details, and I'm getting -- again,
8 there is, you know, I -- I -- I had a passing
9 conversation with -- with Jim at some point
10 on -- on some -- on the executive comp, and I'm
11 getting confused of what is what, because
12 again, I don't know any of these details.

13 Q. Okay. Let me try again,
14 Mr. Waterhouse, and I apologize.

15 Are you aware of any agreement
16 between Jim Dondero and Nancy Dondero
17 concerning any promissory note that was given
18 to Highland by any affiliate or Mr. Dondero?

19 MS. DEITSCH-PEREZ: Object to the
20 form.

21 A. I've heard of an agreement. That
22 is -- that is -- I mean, if you are using aware
23 as heard, sure.

24 Q. And you understand that one of the
25 terms of the agreement is that it was based on

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2 milestones that had to be reached; is that
3 right?

4 MS. DANDENEAU: Objection to form.

5 A. That was one of the words that was
6 used when I heard about it, yes.

7 Q. And when you heard about this
8 agreement that had a term in it concerning
9 milestones reached, did you ask the person who
10 was telling you about the agreement whether or
11 not it was in writing?

12 A. I did not.

13 Q. Did you ask any questions at all?

14 MS. DANDENEAU: Objection to form.

15 A. Not that I recall.

16 Q. But do you understand that going
17 forward, we're going to refer to the agreement
18 as the agreement that you just described that
19 you were --

20 MS. DANDENEAU: Object to the form.

21 A. Yes.

22 Q. Okay. You don't have any personal
23 knowledge concerning the terms of the
24 agreement; correct?

25 MS. DEITSCH-PEREZ: Object to the

1 WATERHOUSE - 10-19-21

2 form.

3 Q. You can answer.

4 A. I don't -- I heard about the
5 agreement. I don't know anything -- I heard
6 there was an agreement. That is -- again, as I
7 testified before -- I said before, heard about
8 it, don't know the details. I believe it was
9 sometime this year.

10 Q. Do you have any personal knowledge
11 about the terms of the agreement, sir?

12 MS. DANDENEAU: Objection to form.

13 A. Other than what I have previously
14 discussed, I don't -- I don't know.

15 Q. Did -- did Mr. Dondero tell you
16 about the existence of the agreement?

17 A. I don't recall.

18 Q. Do you recall the source of your
19 information when you learned about the
20 agreement?

21 A. No, I don't -- I don't recall. I
22 don't remember. I just -- I heard about it
23 generally. I don't remember -- I don't
24 remember who, how, if, how. I don't remember.

25 Q. You know, Mr. Waterhouse, I just

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2 want to be clear that I never would have asked
3 you to appear at this deposition if your name
4 hadn't been included in responses to discovery
5 as to somebody with knowledge about the -- who
6 was told about the existence of the agreement.

7 That is what prompted me do this,
8 and I really do feel compelled to tell you that
9 I otherwise would never have called you as a
10 witness. So I regret that you're being put
11 through this today. I had no intention of
12 burdening you or taking your time, but that is
13 the reason that we issued the subpoena is
14 because certain of the defendants identified
15 you as somebody --

16 MS. DEITSCH-PEREZ: Mr. Morris, you
17 are here to ask questions, not to have --

18 MR. MORRIS: I feel badly for the
19 guy. I really do.

20 MS. DEITSCH-PEREZ: I'm sure you do.

21 MR. MORRIS: I do. Stop.

22 MS. DEITSCH-PEREZ: You stop.

23 MR. MORRIS: I'm allowed.

24 MS. DEITSCH-PEREZ: No, you're not
25 allowed to have a chat with the witness.

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2 Q. Okay. Well, I hope that you
3 appreciate what I'm saying here,
4 Mr. Waterhouse.

5 MS. DANDENEAU: All right. Let's go
6 ahead and ask questions, and again, you're
7 entitled to probe his -- his knowledge
8 of -- whatever knowledge he has about
9 this -- this agreement and --

10 MR. MORRIS: That is what I'm doing.

11 MS. DANDENEAU: -- he will answer
12 the questions to the best that he can.

13 MR. MORRIS: That is what I'm doing.

14 Q. Mr. Waterhouse, I take it you do not
15 know which promissory notes issued by which
16 affiliates or Mr. Dondero are the subject of
17 this agreement; do I have that right?

18 A. Yes, I don't -- I don't know.

19 Q. Do you know of any way to determine
20 which promissory notes issued by the affiliates
21 and Mr. Dondero are the subject of this
22 agreement other than asking Jim or Nancy
23 Dondero?

24 MS. DANDENEAU: Objection to form.

25 A. I don't know.

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2 Q. Did you ever make --

3 A. I don't know anything about these
4 agreements.

5 Q. Did you ever make any effort to
6 determine which promissory notes are subject to
7 this agreement?

8 A. No.

9 Q. Did you ever ask anybody which
10 promissory notes are subject to this agreement?

11 A. No.

12 Q. Do you know if there is a list
13 anywhere of the promissory notes that are
14 subject to this agreement?

15 A. I'm not aware.

16 Q. Have you ever seen the terms of the
17 agreement written down anywhere?

18 A. No.

19 Q. Have you ever asked anybody whether
20 the terms of the agreement were written down
21 anywhere?

22 A. I have not.

23 Q. Did learning about the agreement
24 cause you to do anything in response?

25 MS. DANDENEAU: Objection to form.

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2 A. No.

3 Q. Did anybody ever describe to you the
4 nature of the milestones that you referred to
5 earlier?

6 A. No, I don't -- I don't have any
7 details of this.

8 Q. That is fine.

9 PricewaterhouseCoopers served as
10 Highland's outside auditors prior to the
11 petition date; correct?

12 A. Yes.

13 Q. You refer to PricewaterhouseCoopers
14 as PwC?

15 A. Yes.

16 Q. PricewaterhouseCoopers audited
17 Highland's financial statements on an annual
18 basis; correct?

19 A. During my -- during my time as -- as
20 CFO, yes, PricewaterhouseCoopers was the
21 auditor.

22 Q. Do you know why Highland had its
23 annual financial statements audited each year?

24 A. Generally.

25 Q. Tell me your general understanding

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2 as to the reason why Highland had its annual
3 financial statements audited each year.

4 A. From -- from time to time, they were
5 used -- or asked for, as part of diligence or
6 transactions or -- or things of that nature.

7 Q. And were they given to third parties
8 for purposes of diligence or transactions from
9 time to time?

10 A. As far as I'm aware, yes.

11 Q. And was it your understanding as the
12 CFO that the third parties who received the
13 financial statements in diligence or
14 transactions was going to rely on those?

15 MS. DANDENEAU: Objection to form.

16 A. I don't know -- I don't know gen --
17 I don't know specifically what they were going
18 to rely on. You know, we would get requests
19 for audited financial statements. I don't know
20 what they were relying on.

21 Q. And --

22 A. You would have to ask them.

23 Q. Did you personally play a role in
24 PwC's annual audit and the conduct of the
25 audit?

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2 MS. DANDENEAU: Objection to form.

3 A. During my tenure as CFO, I played a
4 very minimal role.

5 Q. What was the minimal role that you
6 played?

7 A. You know, again, it was -- it was to
8 check in with the team, to make sure that, you
9 know, audit -- the deadlines were being hit,
10 information was being presented to the auditors
11 in a -- in a timely fashion, but, you know,
12 other than that, it was a very capable team
13 that are still current employees of Highland
14 and, you know, they -- they conducted 99
15 percent of -- look, I don't want to give
16 percentages. I mean, this is -- but I -- I --
17 I played a minimal role towards the end.

18 Before during my earlier years as
19 CFO, I did more, and then as time went on, I
20 did less in it.

21 Q. Okay. Was there a person at
22 Highland who was responsible for overseeing
23 Highland's participation in PwC's audit during
24 the time that you were the CFO?

25 A. Yeah. I mean, there was -- there

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2 was a -- there was a point -- it varies. It
3 varies by year, in function, in time and, you
4 know, depending on the request, but yes, I
5 mean, there is -- there is -- there is
6 generally a point person of communication.

7 Q. And who was the point person from
8 2016 until the time you left Highland?

9 A. I don't -- I don't know
10 specifically, but it would have been, you
11 know -- you know, someone on the corporate
12 accounting team.

13 Q. And was there a head of the
14 corporate accounting team?

15 A. Yes, so -- yes.

16 Q. Who was the head of corporate
17 accounting for the five years prior to the time
18 you left Highland?

19 A. I don't -- if you're asking from
20 2016 on, I don't -- it was Dave Klos, but,
21 again, there was -- there was changes to the
22 team and the reporting structure. I don't
23 remember exactly when that happened during --
24 you know, over the last -- since 2016.

25 Q. Did the folks who participated and

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2 ran the audit all report to you, directly or
3 indirectly?

4 A. Yes.

5 Q. And did you have any responsibility
6 for making sure that the audit report was
7 accurate before it was finalized?

8 A. Yeah. I mean, you know, that --
9 that is -- my responsibility to the auditors
10 was -- again, is -- and the CFO is to -- we are
11 providing accurate financial statements; right?

12 And -- and -- and as part of any
13 audit, we disclose all relevant information as
14 part of any audit.

15 Q. Okay. And as the CFO, did you take
16 steps to make sure that the audit report was
17 accurate?

18 A. I mean, I would say in a general
19 sense, yes. But, again, I mean, I had a
20 very -- I had a very capable and competent
21 team. I wasn't managing them.

22 You know, part of what I do is I let
23 the team -- I want managers to grow. I want
24 managers to have rope. And that is -- you
25 know, I'm not a stand-behind-you type of guy.

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2 If you -- if you talk to my team members, I'm
3 not micromanaging people. I want people to
4 learn and grow in their function so they can go
5 on and do bigger and better things with their
6 careers.

7 And so, yes, generally I was
8 responsible for it, but I wanted the team to
9 learn and grow and be responsible for the bulk
10 of the audit.

11 Q. Did you personally review each audit
12 report before it was finalized to satisfy
13 yourself that it was accurate?

14 A. I don't -- I don't recall, you know,
15 for every single -- we're talking 2016, there
16 would have been three years, 2016 to '17, '18.
17 I don't -- we're -- we're going back
18 five years-plus. I don't -- you know, I don't
19 recall.

20 Q. Did you have a practice that you
21 employed to make sure that you were satisfied
22 that Highland's audit reports were true and
23 accurate to the best of your knowledge?

24 A. I mean, our -- the practice was set
25 up with our -- the -- the practice to put

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2 together accurate audited or accurate financial
3 statements is to your control environment.

4 So, you know, the -- so the practice
5 was to maintain a stable control environment
6 which then the output is -- is accurate
7 financial statements.

8 So -- so, you know, if I was
9 comfortable that the control environment was
10 operating, then, you know, that would dictate
11 how I would -- you know, what I might or might
12 not do in a given year.

13 Q. Okay. Do you recall ever being
14 uncomfortable with the control environment
15 during the period that you served as CFO?

16 A. Yeah. I mean, look, yes, there are
17 times -- you know, nothing is perfect. So
18 there were -- there were times when, yes, you
19 know -- there are times I learned I was
20 uncomfortable with the control environment, and
21 that is part of the management of the process
22 and having, you know -- and -- and working
23 through whatever obstacles present themselves.

24 Q. Okay. Were you ever uncomfortable
25 with the control process as it related to

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2 reporting and disclosures of loans to
3 affiliates and Mr. Dondero?

4 MS. DANDENEAU: Objection to form.

5 A. I don't -- I don't recall --

6 Q. So you don't recall --

7 A. -- the --

8 MS. DANDENEAU: Mr. Morris --

9 A. I don't recall being uncomfortable.

10 But, again, we're going back several years. I
11 don't -- you know, the practice in an audit is
12 to disclose all information to the auditors.

13 And I don't -- I don't recall.

14 Q. As part of the process of the audit,
15 did you sign what is sometimes referred to as a
16 management representation letter?

17 A. Yes.

18 MR. MORRIS: Can we put up on the
19 screen a document that we have premarked as
20 Exhibit 33.

21 (Exhibit 33 marked.)

22 MS. DANDENEAU: Mr. Morris, that is
23 not in the binder; correct?

24 MR. MORRIS: Correct.

25 Q. So you will see, Mr. Waterhouse,

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2 this is a letter dated June 3rd. And if we
3 could go to the signature page.

4 And do you see that you and
5 Mr. Dondero signed this document?

6 A. Yes.

7 Q. That is your signature; right?

8 A. Yes.

9 MR. MORRIS: Okay. Can you go back
10 to the top.

11 MS. DANDENEAU: Mr. Morris, can you
12 have somebody post this in the chat so that
13 we have can have a copy of this, please.

14 MR. MORRIS: Yeah, sure. Asia, can
15 you do that, please.

16 Q. Okay. Do you see at the bottom of
17 the second paragraph there is a reference to
18 materiality?

19 A. Yes.

20 Q. Okay. It says, Materiality used for
21 purposes of these representations is
22 \$1.7 million.

23 Do you see that?

24 A. I do.

25 Q. And did PwC set that level of

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2 materiality?

3 A. Yes.

4 Q. And for purposes of the audit, did
5 PwC set the level of materiality each year?

6 A. Yes.

7 Q. Did that number change over time?

8 A. I'm not aware of what materiality is
9 every single year, so -- but, you know, this
10 number would likely fluctuate.

11 Q. Okay. I'm going to go back to a
12 question I asked you earlier today. And that
13 is in connection -- this letter is issued in
14 connection with the audit for the period ending
15 12/31/2018; correct?

16 A. Yes.

17 Q. Okay. And is it fair to say that if
18 any -- actually, withdrawn. I'm going to take
19 it outside of this.

20 If Highland ever forgave the loan to
21 any affiliate or any of its officers or
22 employees, in whole or in part, to the best of
23 your knowledge, would that forgiveness have
24 been disclosed in the audited financial
25 statements if it exceeded the level of

1 WATERHOUSE - 10-19-21

2 materiality that PwC established?

3 MS. DANDENEAU: Objection to form.

4 A. So, again, during my tenure as CFO,
5 and -- Highland -- it was -- it is required to
6 disclose any affiliate loans that are in excess
7 of materiality.

8 Now, the forgiveness of those loans
9 may or may not -- I mean, since materiality
10 fluctuates every year, a -- you know, if a loan
11 was forgiven, it may or may not, you know --
12 and, look, I would want to consult the guidance
13 around this.

14 It is not something we do -- you
15 know, it is not -- you know, GAAP can be and
16 disclosures can be very specialized so, again,
17 we want to consult the guidance. But we would
18 see if and what would need to be disclosed if
19 it were deemed immaterial.

20 Q. Did you and Mr. Dondero sign
21 management representation letters of this type
22 in each year in which you served as Highland's
23 CFO?

24 A. I -- I -- I will speak for myself.
25 I signed them. There may have been others that

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2 signed as well. I don't -- I don't recall.

3 Q. But to the best of your knowledge,
4 you, personally, signed a management
5 representation letter in connection with
6 Highland's audit each year that you served as
7 the CFO; correct?

8 A. I would say generally speaking,
9 Mr. Morris. I don't recall for every single
10 year, you know, generally, but I would want to
11 refer to all the rep letters and see who signed
12 them.

13 Q. Do you recall Highland having its
14 financial statements audited in any year during
15 the period that you were a CFO where you didn't
16 sign the management representation letter?

17 A. I don't recall. But, John, we're
18 going back five, six, seven, eight, nine,
19 decade. I don't -- I don't remember.

20 Q. I don't want to go back that many
21 decades, but I'm just asking you if you recall
22 that there was you didn't sign it?

23 A. I -- I -- I don't, but my memory
24 is -- again, I -- I -- I can't tell you what I
25 did in 2012. I mean, I think generally, yes,

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2 but I don't -- I don't know for sure, and I
3 would want to rely on the document.

4 Q. Let me ask the question a little bit
5 differently then.

6 Do you have any reason to believe
7 that Highland had its annual financial audit
8 and you did not sign a management
9 representation letter in connection with that
10 audit?

11 MS. DANDENEAU: Objection to form.

12 A. I don't believe it would, but,
13 again, I would want to -- I don't recall and I
14 would want to confirm it to -- to make, you
15 know, an affirmative -- to give an affirmative
16 answer.

17 Q. Do you know whether PwC required
18 management to sign management representation
19 letters?

20 MS. DANDENEAU: Objection to form.

21 A. Yes. I mean, it -- management
22 representation letters are signed by
23 management.

24 Q. Okay. And do you know -- do you
25 have any understanding as to why PwC requires

1 WATERHOUSE - 10-19-21

2 management to sign management representation
3 letters?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. I don't know why PwC's -- what PwC's
7 specific practice is. I know generally what
8 management representation letters are.

9 Q. Okay. Do you personally -- I'm not
10 asking about PwC. I'm asking for you -- I'm
11 asking about you, do you have an understanding
12 as to why the auditor asks for management
13 representation letters?

14 A. Okay. So you're asking me in my
15 personal capacity, yes, I have a general
16 understanding of why.

17 Q. Can you give me the general
18 understanding that you have as to why
19 management representation letters are required?

20 A. They are -- they are required to --
21 they are -- they are one of the items required
22 in an audit to help verify completeness.

23 Q. Do you have any -- any other
24 understanding as to why management
25 representation letters are required?

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2 A. That is -- that is -- other than
3 what I said, it is -- it is -- it is required
4 so -- to ensure that the -- you know, there
5 is -- there is completeness in what is being
6 audited.

7 Q. Did you -- did you have a practice
8 whereby you and Mr. Dondero conferred about the
9 management representation letters before you
10 signed them?

11 A. No.

12 Q. Did you have a practice --
13 withdrawn.

14 Do you see just the next sentence
15 after the materiality, there is a sentence that
16 states: We confirm, to the best of our
17 knowledge and belief, as of June 3rd, 2019, the
18 date of your report, the following
19 representations made to you during your audit.

20 Do you see that sentence?

21 A. Yes.

22 Q. Okay. Did you understand when you
23 signed this letter that you were confirming the
24 representations that followed?

25 A. When I signed this management

1 WATERHOUSE - 10-19-21

2 letter -- representation letter, yes.

3 Q. Okay. Did you discuss this letter
4 with Mr. Dondero before you signed it?

5 A. I don't recall.

6 Q. Do you recall if Mr. Dondero asked
7 you any questions before he signed the letter?

8 A. I don't recall.

9 Q. Do you recall if you asked
10 Mr. Dondero any questions before you signed
11 this letter?

12 A. I don't recall.

13 Q. Is it fair to say that Mr. Dondero
14 did not disclose to you the existence of the
15 agreement that we have -- as we've defined that
16 term prior to the time you signed this letter?

17 MS. DANDENEAU: Objection to form.

18 A. I don't think I understand the
19 question. So, again, you are saying, did
20 Mr. Dondero not disclose to me the existence of
21 this letter?

22 Q. No, I apologize.

23 Did Mr. Dondero disclose to you the
24 existence of the agreement prior to the time
25 you signed this letter on June 3rd, 2019?

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2 A. The agreement -- the agreement that
3 we talked about earlier?

4 Q. Correct.

5 A. Look, as I said earlier, the first
6 time I heard of this agreement was sometime
7 this year.

8 Q. Okay. Can we turn -- let's just
9 look at a couple of items on the list. If we
10 can go to page 33416. Do you see in Number 35
11 it talks about the proper recording or
12 disclosure in the financial statements of ND
13 relationships and transactions with related
14 parties.

15 Do you see that?

16 A. I do.

17 Q. As the CFO, do you have any
18 understanding as to whether Dugaboy is a
19 related party?

20 A. I don't recall.

21 Q. Do you know whether any of the
22 affiliates are related parties?

23 A. If -- if it was NexPoint, HCMFA,
24 HCMS, HCRE, yeah, if -- if that is the
25 affiliate definition, and there. In ASC 850 --

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2 again, I mean, I haven't looked at ASC 850 in
3 quite some time, but, you know, if -- if there
4 is a control language, you know, ASC 850, would
5 that -- that section in GAAP would -- would
6 pick up and define what are related parties.

7 So, you know, like I said, if -- one
8 of the four entities I just described, if -- if
9 they are in that control definition of ASC 850,
10 they would be picked up in 35D.

11 Q. Do you -- do you have any reason to
12 believe that they would be picked up in that
13 definition, based on your knowledge and
14 experience?

15 A. I -- I believe that entities
16 controlled under GAAP are -- are affiliates.

17 Q. Okay. Would Mr. Dondero also
18 qualify as a related party for purposes of
19 Section 35D, to the best of your knowledge?

20 A. Yeah, I don't -- I don't know. I
21 would think -- I would have to read the code
22 section to see if someone personally -- is it
23 talking about related parties. So, look, if
24 your own in control, yeah, I mean, I would have
25 to read the section.

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2 Q. To the best of your knowledge, was
3 the existence of the agreement ever disclosed
4 to PwC?

5 A. I'm not -- I'm not aware.

6 Q. Do you recall if the agreement was
7 ever disclosed in Highland's audited financial
8 statements?

9 A. I don't -- I don't remember if it
10 was in every Highland's audited financial
11 statements during my tenure. We would have to
12 read the financial statements to see what was
13 disclosed, but I'm not -- I mean, as I sit here
14 today, I'm not aware.

15 Q. That is all I'm asking for.

16 A. I'm not aware.

17 Q. Can we go to the next page, please,
18 and look at 36. 36 says, we have disclosed to
19 you the identity of the partnership's related
20 party relationships and all the related party
21 relationships and transactions of which we are
22 aware.

23 Do you see that?

24 A. Yes.

25 Q. To the best of your knowledge, as of

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2 June 3rd, 2019, did Highland disclose to PwC
3 the identity of the partnership's related
4 parties and all the related party relationships
5 and transactions of which it was aware?

6 A. I mean, I can speak for myself as
7 signer of this representation letter. I
8 disclosed what -- what, you know, what --
9 what -- what I knew. Sorry, look, yes, so I --
10 I disclosed what I knew.

11 Q. Okay. Can we go to page 419. Do
12 you see at the end there is a reference to
13 events that occurred since the end of the
14 fiscal year and the date of the letter?

15 A. Yes.

16 Q. And were you aware of that -- of
17 that provision of the management representation
18 letter before you signed the document?

19 A. Yes.

20 Q. Do you have an understanding as to
21 why PwC asked for that confirmation of that
22 particular part of the management
23 representation letter?

24 A. It is -- it is -- it is just -- it
25 is a typical audit request.

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2 Q. And do you understand -- do you have
3 an understanding that PwC wanted to know that
4 as of the date of the audit whether any
5 material changes had occurred since the end of
6 the fiscal year, using the definition of
7 materiality that is in this particular
8 management representation letter?

9 A. It -- it is -- it is -- it is a --
10 it is as described. It is just a poorly worded
11 question, so it is hard for me to say yes.

12 Q. If I asked you this, I apologize,
13 but did you ever learn when the agreement was
14 entered into?

15 A. I don't -- I don't -- like I said
16 before, I don't know or have any details of the
17 agreement.

18 Q. Okay. Did you ever ask anybody when
19 the agreement was entered into?

20 A. I did not.

21 Q. Let's look at the audited financial
22 statements. We will put up on the screen a
23 document that has been premarked as Exhibit 34.

24 (Exhibit 34 marked.)

25 MS. DANDENEAU: And again, if Ms. La

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2 Canty could please put that in the chat
3 room, that would be great.

4 MR. MORRIS: I will assure you we
5 will put every document in the chat room.

6 Q. Now, I'm just going to ask you
7 questions that are related to the provisions of
8 this report that concern the affiliate loans,
9 but again, Mr. Waterhouse, if there is any part
10 of the document that you need to see or that
11 you think you might need to see in order to
12 refresh your recollection to answer any of my
13 questions, will you let me know that?

14 A. Yes.

15 Q. Because this is a pretty lengthy
16 document, but do you see that the cover page
17 here is the Highland consolidated financial
18 statements for the period ending December 31st,
19 2018?

20 A. Yes.

21 Q. If we can go to -- I think it is the
22 next one, looking for PwC's signature line.

23 MS. CANTY: I'm sorry, John, did you
24 say something?

25 MR. MORRIS: Yes, can we turn the

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2 page. I think it is 215. Yes, stop right
3 there, just above -- I'm sorry, I want to
4 see just the date of the report.

5 Q. Okay. Do you see at the bottom of
6 that page there, Mr. Waterhouse,
7 PricewaterhouseCoopers has signed this audit
8 report?

9 A. Yes, I see their signature.

10 Q. Okay. And it is the dated same day
11 as your management representation letter; is
12 that right?

13 A. It is -- yes, it is the same day.

14 Q. Was that the practice to sign the
15 management representation letter on the same
16 day that the audit report was signed?

17 A. Yes, that is typical in every audit.

18 Q. Can we just scroll down to the
19 balance sheet on the next page.

20 Do you see that there is a line
21 there that says, Notes and Other Amounts Due
22 from Affiliates?

23 A. Yes.

24 Q. Does that line, to the best of your
25 knowledge, include the amounts that were due

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2 under the affiliate under the notes signed by
3 the affiliates and Mr. Dondero?

4 MR. RUKAVINA: Objection to the
5 extent that calls for a legal conclusion.

6 A. I mean, I would want to see the
7 detail and the build to this \$173,398,000, but,
8 yes, I mean, if -- if -- given what we
9 discussed before, you know, it -- it should
10 capture that.

11 Q. And -- and while you were the CFO of
12 Highland, were all notes held by Highland that
13 were issued by an affiliate or Mr. Dondero
14 carried as assets on Highland's balance sheets?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Object to form.

17 A. I don't -- I don't know how else
18 they would be carried.

19 Q. Okay. Can you think of any -- are
20 you aware of any promissory note issued by an
21 affiliate or Mr. Dondero that was not carried
22 on Highland's audited financial balance sheets?

23 A. I'm -- I'm -- I'm not aware.

24 Q. Okay. Are you aware of any category
25 of asset on Highland's balance sheet in which

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2 any of the promissory notes issued by an
3 affiliate or Mr. Dondero would have been
4 included?

5 MS. DANDENEAU: Objection to form.

6 A. Sorry, am I aware of any asset of an
7 affiliate being included --

8 Q. That -- let me -- let me try again.

9 Do you see there is a number of
10 different assets that are described on this
11 balance sheet?

12 A. Yes.

13 Q. One of the assets that is described
14 is Notes and Other Amounts Due from Affiliates;
15 right?

16 A. Yes.

17 Q. And it is reasonable to conclude
18 that the notes from the affiliates and
19 Mr. Dondero are included in that line item;
20 right?

21 A. Yes, based on this description.
22 Again, I would want to see a build of this to
23 100 percent confirm, but based on the
24 description, the asset description, it is -- it
25 is likely.

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2 Now, does that mean absolute? I
3 don't know.

4 Q. Do you have any reason to believe
5 that the promissory notes would have been
6 carried on the balance sheet in a category
7 other than Notes and Other Amounts Due from
8 Affiliates?

9 A. If they were deemed -- no. If they
10 were deemed an affiliate, you know, under GAAP,
11 they should be carried in that line.
12 Otherwise, it would go into another line.

13 Q. Okay. And do you see the total
14 asset base as of December 31st, 2018, was
15 approximately \$1.04 billion?

16 A. Yes.

17 Q. Is my math correct that the Notes
18 and Other Amounts Due from Affiliates
19 constituted approximately 17 percent of
20 Highland's assets as of the end of 2018?

21 A. Well, so how are you defining
22 Highland?

23 Q. Highland Capital Management, L.P.,
24 the entity that this audit is subject to -- or
25 the subject of.

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2 A. On a consolidated or unconsolidated
3 basis?

4 Q. I'm looking at the balance sheet.
5 It is a consolidated balance sheet. Okay?

6 Does the Notes and Other Amounts Due
7 from Affiliates constitute approximately
8 17 percent of the total assets of Highland
9 Capital Management, L.P., on a consolidated
10 basis?

11 MS. DANDENEAU: Objection to form.

12 A. I don't have a calculator in front
13 of me but I will take your math, if you are
14 taking the 173 divided by the billion.

15 Q. Okay.

16 A. If that is accurate, yes. But,
17 again, on a consolidated basis.

18 Q. And on an unconsolidated basis the
19 percentage would be higher; correct?

20 A. I -- no. I don't know.

21 Q. Well, okay. That is fair.

22 MR. MORRIS: Can we turn to
23 page 241, please.

24 Q. Do you see that this is a section of
25 the audit report that is entitled Notes and

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2 Other Amounts Due from Affiliates?

3 A. Sorry, I can't see the -- the --

4 Q. It is at the top.

5 A. Notes and Other Amounts Due from
6 Affiliates, yes, I see that. I don't -- I
7 don't have a page number, but I'm on a page
8 that says at the top: Notes and Other Amounts
9 Due from Affiliates.

10 Q. Okay. And that is the same title of
11 the line item on the balance sheet that we just
12 looked at; right? Notes and Other Amounts Due
13 from Affiliates?

14 A. Yes.

15 Q. And is it your understanding, based
16 on your experience and knowledge as the CFO,
17 that this is the section of the narrative that
18 ties into the line item that we just looked at?

19 A. Yes.

20 Q. And is this section of the audit
21 report intended to describe and disclose all of
22 the material facts concerning the Notes and
23 Other Amounts Due from Affiliates?

24 MS. DANDENEAU: Objection, form.

25 A. This -- these notes -- these notes

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2 of the financial statements are -- the purpose
3 is to disclose any material items in relation
4 to that balance sheet line item.

5 Q. Okay. And all of the information,
6 to the best of your knowledge, that is set
7 forth in this section of the audit report was
8 provided by Highland; correct?

9 A. Yes, it would have been provided by
10 the corporate accounting team.

11 Q. Okay. And the corporate accounting
12 team, did that team report to you in the
13 organizational structure?

14 A. Yes.

15 Q. And did you have any concerns about
16 the controls that were in place to make sure
17 that the information provided with respect to
18 Notes and Other Amounts Due from Affiliates was
19 accurate and complete?

20 MS. DANDENEAU: Objection to form.

21 A. Not that I recall.

22 Q. Okay. Do you recall ever being
23 concerned that any portion of the Notes and
24 Other Amounts Due from Affiliates in any audit
25 report was inaccurate, incomplete, or not

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2 reliable?

3 A. I didn't -- I had concerns about,
4 you know, like I talked about before, of there
5 were -- there were potentially issues in the
6 control environment. But as far as it relates
7 to the audited financial statements, any -- the
8 team would work with the auditors to disclose
9 all -- all notes in Highland's possession.

10 And any -- any notes that were
11 deemed material by the auditor, right, these
12 were disclosed in these -- in this section, you
13 know, in -- in the notes to the consolidated
14 financial statements as you presented.

15 Q. Do you recall ever having a
16 conversation with anybody at any time
17 concerning the accuracy of the section of audit
18 reports that relates to Notes and Other Amounts
19 Due from Affiliates?

20 MS. DANDENEAU: Objection to form.

21 A. You know, as -- as -- I didn't have
22 direct conversations with
23 PricewaterhouseCoopers as I had, you know --
24 I -- I had the team that managed this.

25 Again, I wasn't anywhere chose to

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2 being the point person of this audit. And I
3 can't recall, you know, when -- you know, I
4 don't even know if I was ever the point person
5 during my tenure as CFO.

6 I don't know if PwC had any concerns
7 when they were performing those audit
8 procedures. They may have and they may have --
9 and it may not have been communicated to me. I
10 don't know.

11 MR. MORRIS: All right. I move to
12 strike.

13 Q. And I'm going to ask you to listen
14 carefully to my question.

15 Did you -- do you recall ever having
16 a conversation with anybody at any time
17 concerning the accuracy of the reporting
18 provided in the audited financial statement on
19 the topic of Notes and Other Amounts Due?

20 MS. DANDENEAU: Objection to form.

21 A. I don't recall for this, but that
22 doesn't mean that it didn't exist.

23 Q. Okay. But you have no reason to
24 believe, as you sit here right now, that you
25 ever discussed with anybody concerns over the

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2 accuracy of the section of the audit reports

3 called Notes and Other Amounts Due from

4 Affiliates; correct?

5 MS. DANDENEAU: Object to the form.

6 MS. DEITSCH-PEREZ: Objection to

7 form.

8 A. I don't recall having any

9 conversations. But, again, I mean, this is --

10 this is two years ago.

11 Q. I'm just asking for your

12 recollection, sir.

13 A. Yes.

14 Q. If you don't recall, this will --

15 A. Yeah.

16 Q. (Overspeak) -- if you don't

17 recall --

18 A. Yeah, I don't -- I don't recall.

19 Q. Do you know who was responsible for

20 drafting the audit report?

21 A. Are you asking the actual Highland

22 employee responsible? I mean, it was

23 Highland's responsibility, so, I mean, that

24 is --

25 Q. Right.

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2 A. -- Highland's responsibility.

3 Highland's responsibility.

4 Q. Who, at Highland, was responsible
5 for drafting this section of the audit report?

6 A. I -- I don't know the answer to
7 that. Again, there was a team who worked on
8 this. And I don't know, you know, whether it
9 was the staff or the manager.

10 Again, this is where I let the teams
11 manage. And, you know, there may be a
12 corporate accountant who worked on this. I
13 just -- you know, I wasn't part of that process
14 to give that person experience. I don't know.

15 Q. Do you recall having any
16 communications with anybody at any time
17 concerning this section of the report?

18 A. Yeah, I don't recall.

19 Q. Do you recall whether you ever told
20 anybody at any time that any aspect of this
21 section of the report was inaccurate or
22 incomplete?

23 A. I don't recall.

24 Q. As you sit here today, do you have
25 any reason to believe that this section of the

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2 audit report is incomplete or inaccurate in any
3 way?

4 And I'm happy to give you a moment
5 to -- to look at it, if you would like.

6 MS. DANDENEAU: Objection to form.

7 MS. DEITSCH-PEREZ: Same.

8 A. I mean, I would have to look at -- I
9 would have to look at the bill to the note
10 schedule to make sure I know you presented me
11 with materiality, but again, there might be a
12 note as of 12/31/18 that somehow was -- was
13 under materiality not disclosed. I don't -- I
14 don't know. I would need more information.

15 Q. Okay. But without more information,
16 you have no reason to believe anything this
17 section is inaccurate; correct?

18 MS. DANDENEAU: Objection to form.

19 A. I don't. I mean, you know, this was
20 part of the audit.

21 Q. Thank you. Now, you will see if we
22 could scroll just a little bit more that each
23 of the first five paragraphs concerns
24 specifically the four affiliates that we've
25 been discussing and Mr. Dondero.

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2 MR. MORRIS: If we could go the
3 other way, La Asia. We don't need Okada.
4 We're going to have to thread the needle.
5 Okay. Good, perfect.

6 Q. Do you see those five paragraphs
7 certain the four affiliates and Mr. Dondero as
8 we've been referring to today?

9 A. Yes.

10 Q. Okay. And do you see at the end of
11 every paragraph it states, quote: A fair value
12 of a partnership's outstanding notes receivable
13 approximates the carrying value of the notes
14 receivable?

15 A. Yes, I see that.

16 Q. Do you have an understanding of what
17 that means?

18 A. Yes.

19 Q. What is your understanding of that
20 sentence?

21 A. It is the -- again, the -- the fair
22 value, right, which is -- which is what the --
23 what Highland could sell that asset for. This
24 statement is comparing the fair value of the
25 notes to the carrying value, so the carrying

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2 value is the line item that you showed me
3 earlier that is in Notes and Other Amounts Due
4 from Affiliates.

5 Q. Okay. Is another way to say this is
6 that the fair market value of the notes equals
7 the principal amount and -- withdrawn.

8 Is the fair way to interpret this
9 that the fair market value of the notes equals
10 all remaining unpaid principal and interest due
11 under the notes?

12 MS. DANDENEAU: Object to the form.

13 MS. DEITSCH-PEREZ: Objection, form.

14 A. I don't know the answer to that,
15 because I don't recall where -- where any --
16 where -- in what line item was the interest
17 component reported.

18 Q. All right. Well, if we look in this
19 audit report, you will see in the middle of the
20 first paragraph, for example, it states that as
21 of December 31st, 2018, total interest and
22 principal due on outstanding promissory notes
23 was approximately \$5.3 million.

24 Do you see that?

25 A. I do.

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2 Q. Is that the carrying value or the
3 fair value?

4 A. That would be the carrying value --

5 Q. And is the last --

6 A. -- in my opinion.

7 Q. Okay. And it is in your opinion as
8 the chief financial officer of Highland during
9 the period of time that you described; right?
10 It is an educated opinion?

11 A. I'm reading this at face value. I'm
12 taking that as that is carrying value.

13 Q. Okay. And does the last sentence
14 say that the carrying value is roughly
15 approximate to the fair market value?

16 MS. DANDENEAU: Objection to form.

17 MS. DEITSCH-PEREZ: Objection, form.

18 A. Again, this note to the financial
19 statement is specific to notes and other
20 amounts due from affiliates.

21 Q. Correct.

22 A. If the interest component is
23 reported elsewhere on the balance sheet, you
24 know, it -- it -- it could be off. Again, I
25 don't have the detail. I don't know, but yes,

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2 look, I mean, if you -- I mean, if you are
3 saying the 5.3 million is in the notes and
4 other amounts due from affiliates, then the
5 last statement is saying the fair value
6 approximates 5.3 million. That is what that
7 last sentence is saying.

8 Q. Do you see in the middle of the
9 first paragraph -- not in the middle, the next
10 to last sentence there is a statement that the
11 partnership will not demand payment on amounts
12 that exceed HCMFA's excess cash availability
13 prior to May 31st, 2021.

14 Do you see that?

15 A. I do.

16 Q. Do you know when Highland agreed not
17 to demand payment as described in that
18 sentence?

19 A. I don't know specifically.

20 Q. Do you know why Highland agreed not
21 to demand payment on HCMFA's notes until May
22 2021?

23 A. Yes.

24 Q. Why was that decision made?

25 A. You know, well, it -- it -- that

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2 decision was made as to not put HCMFA into a
3 position where it didn't have sufficient assets
4 to pay for the demand note.

5 Q. And at the time the agreement was
6 entered into, pursuant to which the partnership
7 wouldn't demand payment, did HCMFA have
8 insufficient assets to satisfy the notes if a
9 demand had been made?

10 MS. DANDENEAU: Objection to form.

11 A. I don't have HCMFA's financial
12 statements in front of me as of 12/31/18.

13 Q. Was there a concern that HCMFA would
14 be unable to satisfy its demands under the
15 notes if demand was made?

16 MS. DANDENEAU: Objection to form.

17 A. Well, there is -- I don't recall --
18 I mean, there is something, right, in place to
19 basically not demand payment until May 31, 2021
20 as detailed here.

21 Q. And who made the decision to enter
22 into -- who made the decision on behalf of
23 Highland not to demand payment until May 31st,
24 2021?

25 A. I'm trying to remember. I don't

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remember exactly -- I don't remember if it was
myself or -- or Jim Dondero who -- who -- there
was -- there was something signed, from what I
recall, that -- that -- that backed up this
line item in the -- in the notes I'm -- look,
I'm, I'm --

Q. We will get to that.

A. You --

Q. I'm just --

A. You have -- I mean --

Q. We're going to give that to you.

I'm going to give that to you.

A. You -- you -- you have all the
documents. I don't have the documents, and
that is what makes it so hard. I don't have
any documents to prepare for this deposition;
right? You have all -- I don't -- I don't -- I
don't remember, but, you know, again, it would
probably be myself or Jim.

Q. Do you know if Highland received
anything in return for its agreement not to
make a demand for two years?

A. I don't -- I don't think it referred
anything.

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2 Q. And did you and Mr. Dondero discuss
3 HCMFA's ability to satisfy the notes if a
4 demand was made at the time this agreement was
5 entered into?

6 MS. DANDENEAU: Objection to form.

7 A. I don't -- I don't -- I don't recall
8 having a specific conversation, if I did, or --
9 or David Klos.

10 Q. Okay. I'm just asking if you recall
11 any conversations that you had.

12 A. I don't recall.

13 Q. Okay. Do you know why Highland
14 loaned the money to HCMFA that is the subject
15 of the notes described in this paragraph?

16 A. I don't remember specifically why
17 5.3 million was loaned. I mean, I -- it would
18 have to be put in the context.

19 Q. Do you have any recollection at all
20 as to why Highland ever loaned any money to
21 HCMFA?

22 A. Yes.

23 MS. DANDENEAU: Objection to form.

24 Q. What do you remember about that?

25 A. There was a Highland Global

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2 Allocation Fund, which was a -- a fund managed
3 by Highland Capital Management Fund Advisors.
4 There was a -- we -- I'm just telling you,
5 there was -- there was -- there was a -- a
6 ultimately a NAV error found in this fund while
7 it was an open-ended fund and, you know, there
8 were amounts owed by the advisor in -- in
9 relation to that NAV error.

10 There were also, for the same fund,
11 that same fund was ongoing an
12 open-end-to-close-end conversion, and as part
13 of that proposal, shareholders who voted for
14 the conversion received compensation from the
15 advisor.

16 Q. All right. Now, the events that
17 you're describing occurred in the spring of
18 2019; right?

19 A. These started back -- I think, I
20 mean --

21 Q. I apologize.

22 A. -- that -- I mean, the answer to
23 that is no.

24 Q. I apologize, the loans that were
25 made in connection with the events that you're

1 WATERHOUSE - 10-19-21

2 describing occurred in May 2019; right?

3 MR. RUKAVINA: Objection to the
4 extent that calls for a legal conclusion.

5 A. I don't recall specifically what
6 amounts of money were moved when, for what
7 purpose.

8 Q. Okay. Fair enough. Going to the
9 next paragraph, do you recall that NexPoint
10 Advisors had obtained a number of loans from
11 Highland, and they rolled up those loans into
12 one note in approximately 2017?

13 A. This is for NexPoint Advisors?

14 Q. Yes.

15 A. I -- I mean, I don't -- I don't
16 recall the NexPoint Advisors loan being a
17 roll-up loan, but --

18 Q. Do you know why?

19 A. But, look, if you have documents
20 that show -- I mean, look, I just don't recall.

21 Q. Okay. That is fair. Do you know
22 why -- do you have any recollection as to why
23 Highland loaned money to NexPoint?

24 A. Yes.

25 Q. Why did High -- why do you recall --

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2 what is the reason you recall Highland lending
3 money to NexPoint?

4 A. I mean, I was just -- I just -- I
5 just recall. I mean, I just -- I don't
6 remember why.

7 Q. I understand. And I'm asking you if
8 you recall --

9 A. Oh, why -- I thought you say --
10 NexPoint Advisors was launching a fund which
11 is -- I believe that the legal name is NexPoint
12 Capital, Inc. And it -- it provided a
13 co-invest into that fund.

14 And, from what I remember, the --
15 the -- that NexPoint borrowed money from
16 Highland at the time to make that co-invest.

17 Q. So this was an investment that
18 NexPoint was required to make; is that right?

19 MS. DANDENEAU: Objection to form.

20 A. I don't know if it was required to
21 make, I don't recall that, or if it just made
22 it.

23 Q. Okay. But your recollection is that
24 NexPoint made an investment and they borrowed
25 money from Highland to finance the investment.

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2 Do I have that right?

3 A. Yes.

4 Q. How about HCRE? Do you know why
5 HCRE borrowed money from Highland?

6 A. I don't remember specifically.

7 Q. Do you remember generally?

8 A. Generally, yeah -- I mean, yes.

9 Q. Can you tell me your general
10 recollection as to why Highland loaned money to
11 HCRE?

12 A. For -- for -- for investment
13 purposes.

14 Q. So HCRE made the investment and it
15 obtained a loan, or loans, from Highland in
16 order to finance that investment or those
17 investments.

18 Do I have that right?

19 A. I mean, I -- you know, generally.

20 Q. Okay. How about Highland Management
21 Services, Inc.?

22 Do you have any recollection as to
23 why HCMS borrowed money from Highland?

24 A. Generally.

25 Q. What is your general recollection as

1 WATERHOUSE - 10-19-21

2 to why HCMS borrowed money from Highland?

3 A. For -- for investment purposes.

4 Q. So it is the same thing, HCMS wanted
5 to make investments and it borrowed money from
6 Highland in order to finance those investments;
7 is that right?

8 A. I mean, yes, generally. I mean, I
9 can't -- I don't -- on the services, there --
10 there are several loans in these schedules.
11 You know, I can't remember why every single one
12 of these were made, but I would say, yeah, I
13 mean, generally.

14 Q. Okay. I appreciate that.

15 MR. MORRIS: Let's go to the page
16 with Bates No. 251. La Asia, are you
17 there?

18 MS. CANTY: Sorry, John. It went
19 out for a minute. Can you say that again.
20 I don't know what is going on.

21 MR. MORRIS: The page with Bates
22 No. 251, can we go to that.

23 MS. CANTY: Yes, sorry.

24 MR. MORRIS: Keep going to the
25 bottom. Yeah, there you go.

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2 Q. Do you see, Mr. Waterhouse, that
3 there is a section there called Subsequent
4 Events?

5 A. I do.

6 Q. And does this relate to the last
7 sentence above the signature line on the
8 management representation letter that we talked
9 about earlier where you made the representation
10 that you disclosed subsequent events?

11 A. I mean, it relates to it, but not in
12 its entirety.

13 Q. Okay.

14 MR. MORRIS: If we can scroll up to
15 capture the entirety of this section right
16 here.

17 Q. And what do you mean by that, sir?

18 MR. MORRIS: Yeah, right there.

19 Perfect.

20 A. There are -- there are different
21 subsequent events in -- under GAAP. So there
22 are -- and -- and -- so what we see in the
23 notes to the financial statements are one type
24 of subevent.

25 Q. Okay. And -- and would the type of

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2 subsequent event relating to affiliate loans be
3 captured in this section if they were -- if
4 they were made after the end of the fiscal year
5 and prior to the issuance of the audit report?

6 A. Yes, if they were deemed material or
7 disclosable.

8 Q. Okay. I appreciate that.

9 Do you see the next to the last
10 entry there? It says, Over the course of 2019
11 through the report date, HCMFA issued
12 promissory notes to the partnership in the
13 aggregate amount of \$7.4 million?

14 A. Yes.

15 Q. And does that refresh your
16 recollection that those are the notes that
17 related to the NAV error that you mentioned
18 earlier?

19 A. I don't -- I don't remember the
20 exact. Again, there are -- I mentioned two
21 line items; right?

22 Q. Yes.

23 A. I mean, it was the GAAP conversion
24 process plus the -- the NAV error. I don't
25 have the details. I don't recall specifically

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2 if -- you know, what -- if that 7.4 million was
3 solely attributable to the NAV error.

4 Q. Okay. But there is no question that
5 Highland told PricewaterhouseCoopers that over
6 the course of 2019 HCMFA issued promissory
7 notes to the partnership in the aggregate
8 amount of \$7.4 million; correct?

9 A. In the course of the audit, we would
10 have produced all promissory notes in our
11 possession, including the ones that are
12 detailed here.

13 Q. Do you recall that you signed the
14 two promissory notes that are referenced in
15 that provision?

16 MS. DANDENEAU: Objection to form.

17 A. I didn't recall initially but I've
18 been reminded.

19 Q. Okay. And -- and do you recall that
20 those notes are dated May 2nd and May 3rd,
21 2019?

22 A. Yes.

23 Q. So that was just a month before the
24 audit was completed; correct?

25 A. Yes. I think we had a June 3rd

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2 date, right, if -- if my memory serves me
3 right.

4 Q. Yes, I will represent to you that
5 your memory is accurate in that regard.

6 Did anybody ever instruct you as the
7 CFO to correct this statement that we're
8 looking at in subsequent events?

9 A. So let me understand. You're saying
10 when I was CFO at Highland Capital did anyone
11 ever ask me to correct the -- over the course
12 of 2019 through the report date HCMFA issued
13 promissory notes, this statement?

14 Q. Right.

15 A. Not that I'm aware.

16 Q. While you were the CFO of Highland,
17 did anybody ever tell you that that sentence
18 was wrong?

19 A. Not that I'm aware.

20 Q. Highland -- withdrawn.

21 HCMFA disclosed these notes in its
22 own audited financial statements; right?

23 MR. RUKAVINA: Objection, form.

24 A. I assume that these would be
25 material -- if these are material financial

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2 statements, yes, they -- they -- they should be
3 and they were likely disclosed.

4 Q. Now, there is no statement
5 concerning the 2019 notes about the forbearance
6 that we looked at in the affiliated note
7 section of the report; right?

8 MS. DANDENEAU: Objection to form.

9 Q. I'll withdraw. That was bad.

10 Do you recall when we were looking
11 at the paragraph concerning HCMFA earlier it
12 had that disclosure about the agreement whereby
13 Highland wouldn't ask for demand on the -- on
14 the HCMFA notes?

15 A. Yes.

16 Q. That forbearance disclosure is not
17 made with respect to the 2019 notes; right?

18 A. Not -- look, not that I can recall,
19 unless -- unless it was done at a subsequent
20 day.

21 Q. Right. And it is not in the
22 subsequent event section that we're looking at
23 right now where the 2019 notes are described;
24 right?

25 A. Right. But this is through

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2 June 3rd. It could have been done on June 4th.

3 I don't -- I don't -- I don't recall.

4 Q. Okay.

5 MR. MORRIS: Can we put up on the
6 screen the HCMFA audit report. And while
7 we're --

8 MS. DANDENEAU: What exhibit is
9 this?

10 MR. MORRIS: La Asia, what number is
11 that?

12 MS. CANTY: 45.

13 MR. MORRIS: So this will be marked
14 as Exhibit 45.

15 (Exhibit 45 marked.)

16 MS. CANTY: Yeah, and I will put it
17 in the chat.

18 MS. DANDENEAU: Thank you.

19 Q. Okay. All right. Do you see that
20 this is the consolidated financial statements
21 for HCMFA for the period ending 12/31/18?

22 A. Yes.

23 Q. As the treasurer of HCMFA at the
24 time, did you have to sign a management
25 representation letter similar to the one that

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2 we looked at earlier for Highland?

3 A. I would imagine I would have been
4 asked to. I don't recall if I did.

5 Q. Do you recall ever being asked by an
6 auditor to sign a management representation
7 letter and then not doing it?

8 A. No.

9 MR. MORRIS: Can we just scroll down
10 again. I just want to see the date of the
11 document.

12 A. I mean, let me -- you know, there
13 are different versions to management
14 representation letters I will qualify.

15 Yes, there are certain -- from time
16 to time auditors can make representations
17 that -- in the rep letter that is being
18 proposed that are inaccurate or out of scope or
19 things like that and they've asked for
20 signature.

21 In that context, yes. I mean, you
22 know -- I mean, if I have been asked to sign
23 and make those representations and those
24 representations are invalid, yes, I would not,
25 I mean, I -- I wouldn't sign that.

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2 Q. Okay. PricewaterhouseCoopers served
3 as HCMFA's outside auditors as well; correct?

4 A. Yes.

5 Q. Do you see that this audit report is
6 signed on June 3rd, 2019, just like the
7 Highland audit report?

8 A. That is correct.

9 Q. And did the process of -- of
10 preparing HCMFA's audit report, was that the
11 same process that Highland followed when it did
12 its audit report at this time?

13 A. I mean, it is a different entity.
14 There are different assets. You know, it --
15 it -- it is -- as you saw, Highland's
16 financials are on a consolidated basis. This
17 is different, so it is under the same control
18 environment and team.

19 Q. Okay. I appreciate that. So the
20 same control environment and team participated
21 in the preparation of the audit for Highland
22 and for HCMFA at around the same time; correct?

23 A. Yes.

24 MR. MORRIS: Can we go to page 17 of
25 the report. I don't have the Bates number.

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2 Q. Okay. Do you see that just like
3 Highland's audited financial report, HCMFA's
4 audited financial report also has a section
5 related to subsequent events?

6 A. Yes.

7 Q. And am I reading this correctly that
8 just as Highland had done, HCMFA disclosed in
9 its audited financial report a subsequent event
10 that related to the issuance of promissory
11 notes to Highland in the aggregate amount of
12 \$7.4 million in 2019?

13 A. That is what I see in the report.

14 Q. And you were the treasurer of HCMFA
15 at the time; right?

16 A. Yes, to the best of my knowledge.

17 Q. And did anybody ever tell you prior
18 to the time of the issuance of this audit
19 report that that sentence relating to HCMFA's
20 2019 notes was inaccurate or wrong in any way?

21 A. Not that I recall.

22 Q. As you sit here right now, has
23 anybody ever told you that that sentence is
24 inaccurate or wrong in any way?

25 A. Not that I recall.

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2 Q. I apologize if I asked you this
3 already, but has anybody ever told you at any
4 time that you are not authorized to sign the
5 promissory notes that are the subject of the
6 sentence we're looking at?

7 A. Not that I recall.

8 Q. Did anybody ever tell you at any
9 time that you had made a mistake when you
10 signed the promissory notes that are the
11 subject of this sentence?

12 A. Say that again. Did anyone ever say
13 that I made a mistake?

14 Q. Let me ask the question again.
15 Did anybody ever tell you at any
16 time that you made a mistake when you signed
17 the two promissory notes in Highland's favor on
18 behalf of HCMFA in 2019?

19 A. Not that I recall.

20 MR. MORRIS: Let's just look at the
21 promissory notes quickly. Can we please
22 put up Document Number 1, and so this is in
23 the pile that y'all have. We'll just go
24 for a few more minutes and we can take our
25 lunch break.

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2 Q. All right. So I don't know if you
3 have seen this before, sir. Do you see that
4 this is a complaint against HCMFA?

5 A. Yes, I am looking at it on the
6 screen.

7 Q. Okay. And have you ever seen this
8 document before?

9 A. I went through some of these
10 documents with my counsel here yesterday.

11 MR. MORRIS: All right. Can we go
12 to Exhibit 1 of this document.

13 Q. Do you see Exhibit 1 is a
14 \$2.4 million promissory note back in 2019?

15 A. Yeah, I found it in the book. Yes,
16 I have it here in front of me.

17 Q. And this is a demand note, right, if
18 you look at Paragraph 2?

19 A. Yes.

20 Q. And this is a note where the maker
21 is HCMFA, and Highland is the payee; right?

22 A. Yes.

23 MR. MORRIS: And if we can scroll
24 down, can we just see Mr. Waterhouse's
25 signature.

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2 Q. Is that your signature, sir?

3 A. Yes, it is.

4 Q. And did you sign this document on or
5 around May 2nd, 2019?

6 A. I don't recall specifically signing
7 this, but this is my signature.

8 Q. Okay. And do you recall that
9 Highland transferred \$2.4 million to HCMFA at
10 or around the time you signed this document?

11 A. I don't recall specifically. I
12 would want to, as I sit here today, go back and
13 confirm that, but again, presumably that --
14 that -- that did happen.

15 Q. You wouldn't have signed this
16 document if you didn't believe that HCMFA
17 either received or was going to receive
18 \$2.4 million from Highland; is that fair?

19 A. I mean, it -- if -- if -- if there
20 wasn't a transfer of value, yeah, I mean, you
21 know, I would have no reason to -- to sign a
22 note.

23 Q. And -- and Highland wouldn't have
24 given this note to PricewaterhouseCoopers if --
25 withdrawn.

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2 HCMFA wouldn't have given this note
3 to PricewaterhouseCoopers if it hadn't received
4 the principal value of -- of the note in the
5 form of a loan; correct?

6 MR. RUKAVINA: Objection, legal
7 conclusion, speculation and form.

8 A. Again, we -- what we provided to PwC
9 were, as part of the audit, any promissory
10 notes executed and outstanding. You know, as a
11 part of the audit, they, you know, they -- they
12 have copies of all the bank statements,
13 things -- things of that sort.

14 MR. MORRIS: Okay. Can we go to
15 Exhibit 2.

16 (Exhibit 2 marked.)

17 Q. Do you see that this is a promissory
18 note dated May 3rd, 2019 in the amount of
19 \$5 million?

20 A. Yes.

21 Q. Do you believe this is also a demand
22 note if you look at Paragraph 2?

23 A. Yes.

24 Q. And do you see that HCMFA is the
25 maker, and Highland is the payee?

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2 A. Yes.

3 Q. And if we go to the bottom, can we
4 just confirm that that is your signature?

5 A. Yes.

6 Q. And together these notes are the
7 notes that are referred to both in Highland and
8 HCMFA's audited financial reports in the
9 subsequent event sections; correct?

10 MS. DANDENEAU: Objection to form.

11 A. They -- they -- they totaled
12 \$7.4 million, so presumably, yes.

13 Q. Okay. And you were authorized to
14 sign these two notes; correct?

15 MR. RUKAVINA: Objection, legal
16 conclusion.

17 A. Yeah. I mean, I'm -- I was the
18 officer of -- of HCMFA. You know, I -- I'm not
19 the legal expert on -- on what that -- what
20 that confers to me or what it doesn't. I mean,
21 that is my signature on the notes.

22 Q. And you believed you were authorized
23 to sign the notes; is that fair?

24 A. I signed a lot of documents in my
25 capacity, just because it is operational in

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2 nature. So, you know, to me this was just
3 another document, to be perfectly honest.

4 Q. Sir, would you have signed
5 promissory notes with the principal amount of
6 \$7.4 million if you didn't believe you were
7 authorized to do so?

8 MS. DANDENEAU: Objection to form.

9 Q. Are you frozen?

10 A. No. I'm just -- you know, it is --
11 you know, again, I typically don't sign
12 promissory notes, and I don't recall why I
13 signed these, but -- you know, but I did.

14 Q. All right. So listen carefully to
15 my question. Would you have ever signed
16 promissory notes with a face amount of
17 \$7.4 million without believing that you were
18 authorized to do so?

19 A. No. I mean, I'm -- I'm putting my
20 signature on there, so no.

21 Q. Okay. And would you have signed two
22 promissory notes obligating HCMFA to pay
23 Highland \$7.4 million without Mr. Dondero's
24 prior knowledge and approval?

25 MS. DEITSCH-PEREZ: Object to the

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2 form.

3 A. You know, from -- from what I recall
4 around these notes, you know, I don't recall
5 specifically Mr. -- Mr. Dondero saying to -- to
6 make this a loan.

7 So my conversation with Mr. Dondero
8 around the culmination of the NAV error as
9 related to TerreStar which was a -- a -- I
10 think it was a year and a half process. I
11 don't know, it was a multi-month process, very
12 laborious, very difficult.

13 When we got to the end, I had a
14 conversation with Mr. Dondero on where to, you
15 know, basically get the funds to reimburse the
16 fund, and I recall him saying, get the money
17 from Highland.

18 Q. And so he told you to get the money
19 from Highland; is that right?

20 A. That is what I recall -- in my
21 conversation with him, that is -- that is what
22 I can recall.

23 Q. Do you know who drafted these notes?

24 A. I don't.

25 Q. Did you ask somebody to draft the

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2 notes?

3 A. I didn't ask -- I don't specifically
4 ask people to draft notes really. I mean,
5 again, you know, the legal group at Highland is
6 responsible and has always been responsible for
7 drafting promissory notes.

8 Q. So based on your -- based on the
9 practice, you believe that somebody from the
10 Highland's legal department would have drafted
11 these notes. Do I have that right?

12 MS. DEITSCH-PEREZ: Object to the
13 form. John, I also asked you for the Word
14 versions of these notes so we could look at
15 the properties, and you have not provided
16 them. Are you intending to?

17 MR. MORRIS: No.

18 Q. Can you answer my question, sir?

19 A. Again, I --

20 MS. DANDENEAU: Do you want him to
21 repeat it?

22 A. Yeah, why don't you repeat it?

23 Q. Sure. Mr. Waterhouse, based on the
24 practice that you have described in your
25 understanding, do you believe that these notes

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2 would have been drafted by somebody in the
3 legal department?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. Yes.

7 Q. Okay. And do you know who would
8 have instructed -- do you have any knowledge as
9 to who would have instructed the legal
10 department to draft these notes?

11 MS. DEITSCH-PEREZ: Object to the
12 form.

13 A. It was whoever was working -- I
14 mean, it was likely someone on the team. I
15 mean, I don't remember exactly on every note or
16 every document, but, again, a lot of these
17 things of this nature -- they're operational in
18 nature -- were handled by the team.

19 The team knows to -- I mean, we
20 don't draft documents. We're not lawyers.
21 We're not attorneys. It is not what I do or
22 accountants do.

23 So they are always instructed to go
24 and -- and go to the legal team to get
25 documents like this drafted. Also, when you go

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2 to the legal team, the -- you know, we always
3 loop in compliance. And compliance -- when you
4 go to the legal team, compliance is part of
5 legal team. They're made aware of -- of -- of
6 these types of transactions.

7 Q. And do you believe that you had
8 the -- withdrawn.

9 Did you ever tell Mr. Dondero --
10 (inaudible) -- did you see those?

11 A. Sorry.

12 MS. DEITSCH-PEREZ: I did not hear
13 the end of that question.

14 Q. Did you ever tell Mr. Dondero that
15 you signed these two notes?

16 A. I don't recall ever -- no, I don't
17 recall having a conversation with him.

18 Q. Did you ever discuss these two notes
19 with him at any time?

20 A. The conversation, I recall, was what
21 I described earlier. And that is the only time
22 I recall ever discussing this.

23 Q. Okay. But the corporate accounting
24 group had a copy of this -- of these two notes.
25 And pursuant to the audit process, the

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2 corporate accounting group gave the two notes
3 to PricewaterhouseCoopers in connection with
4 the audit; correct?

5 MS. DANDENEAU: Objection to form.

6 A. Yes. I mean, that is -- yeah, I
7 mean, they -- unless the legal team can also
8 retain copies of items like this. I mean, I
9 don't know everything that they would retain as
10 well.

11 The legal team would also, if they
12 had documents as part of audits, turn that over
13 to the auditors as well. So it could have been
14 the corporate accounting team. It could be
15 someone on the legal team.

16 Q. All right. So you didn't -- you
17 didn't draft this note; right?

18 A. I -- I -- I did not.

19 Q. But somebody at Highland did; is
20 that fair?

21 MS. DEITSCH-PEREZ: Object to the
22 form.

23 A. I don't know. I mean, we can go to
24 the legal team. I don't -- I'm not sitting
25 behind someone in legal. Maybe they went to

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2 outside counsel. I have no idea.

3 Q. Did you have any reason to believe
4 you weren't authorized to sign this note,
5 either of these two notes?

6 A. I think I have already answered that
7 question.

8 Q. Okay. You didn't give these notes
9 to PricewaterhouseCoopers; correct?

10 MS. DANDENEAU: Objection to form.

11 A. I don't recall giving these to
12 PricewaterhouseCoopers.

13 Q. And in the practice that you have
14 described, somebody in the corporate accounting
15 group would have given these two notes to
16 PricewaterhouseCoopers; correct?

17 MS. DANDENEAU: Objection to form.

18 A. I think I've answered that. I said
19 either the corporate accounting team or maybe
20 the legal team.

21 MR. MORRIS: Okay. Why don't we
22 take our lunch break here.

23 VIDEOGRAPHER: We're going off the
24 record at 1:04 p.m.

25 (Recess taken 1:04 p.m. to 1:49 p.m.)

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2 VIDEOGRAPHER: We are back on the
3 record at 1:49 p.m.

4 Q. Mr. Waterhouse, did you speak with
5 anybody during the break about the substance of
6 this deposition?

7 A. I spoke to -- to Deb and Michelle.

8 Q. About the substance of the
9 deposition?

10 A. Yes.

11 Q. Can you tell me what you talked
12 about?

13 MS. DANDENEAU: No. We object on
14 the basis of privilege.

15 Q. Okay. You are going to follow your
16 counsel's objection here?

17 A. Yes.

18 Q. Okay.

19 MR. MORRIS: Can we put up on the
20 screen Exhibit 35.

21 (Exhibit 35 marked.)

22 Q. Are you able to see that document,
23 sir?

24 A. Yes.

25 Q. Have you ever seen an incumbency

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2 certificate before?

3 A. I have.

4 Q. Do you have a general understanding
5 of what an incumbency certificate is?

6 A. I have a general understanding.

7 Q. What is your general understanding?

8 A. You know, those -- my general
9 understanding is that the incumbency
10 certificate basically lists folks that can --
11 are like authorized signers.

12 Q. Okay. And do you see that this is
13 an incumbency certificate for Highland Capital
14 Management Fund Advisors, L.P.?

15 A. Yes.

16 Q. Okay. And if we could scroll down
17 just a little bit, do you see that it's dated
18 effective as of April 11th, 2019?

19 A. Yes, I see that.

20 Q. Okay. And is that your signature in
21 the middle of the signature block?

22 A. Yes, it is.

23 Q. And by signing it, did you accept
24 appointment as the treasurer of HCMFA effective
25 as of April 11th, 2019?

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2 A. Again, I'm not the legal -- I don't
3 know if this makes me the treasurer or the
4 appointment. I don't know -- I don't know
5 that, so I don't -- I don't know if that
6 document -- again, I think -- again, I'm not
7 the legal expert. I think isn't there --
8 aren't there other legal documents that detail
9 who the officers are that could be incorporated
10 or things like that? Again, I don't want to
11 play armchair attorney here.

12 Q. I'm not asking you for a legal
13 conclusion. I'm asking you for your knowledge
14 and understanding. When you signed this
15 document, did you understand that you were
16 accepting an appointment as the treasurer of
17 HCMFA?

18 MS. DANDENEAU: Objection to form.

19 MS. DEITSCH-PEREZ: Objection, form.

20 A. Again, I don't think this -- that
21 wasn't my understanding. I don't think this
22 makes -- this document makes me the treasurer.

23 Q. What do you think this document --
24 why did you sign this document?

25 MS. DEITSCH-PEREZ: Objection to

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2 form.

3 MR. MORRIS: You're objecting to the
4 form of the question when I asked him why
5 did you sign the document? What is the
6 basis for the objection?

7 MS. DEITSCH-PEREZ: Because, John, I
8 think that it does call for a legal
9 conclusion other than -- with him saying
10 because somebody told me to sign this
11 document. But if you want to go there,
12 that is fine.

13 MR. MORRIS: Okay.

14 MS. DANDENEAU: I don't think --
15 he's already said he's not a lawyer.

16 MR. MORRIS: I'll allow the witness
17 to answer this question.

18 Q. Why did you sign this document, sir?

19 A. I mean, our -- our legal group would
20 bring by these incumbency certificates from
21 time to time. I have no idea why they're being
22 updated, and I was asked to sign.

23 Q. Did you ask anybody, what is this
24 document?

25 A. No.

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2 Q. Did anybody tell you why they needed
3 you to sign the document?

4 A. Not that I can recall.

5 Q. You testified earlier that you
6 understood that you served as the acting
7 treasurer for HCMFA; correct?

8 A. Yes.

9 Q. How did you become the acting
10 treasurer of HCMFA?

11 MS. DANDENEAU: Objection to form.

12 A. I don't -- I don't know the legal --
13 I don't know the legal mechanic of how I became
14 the acting treasurer.

15 Q. I'm not asking for the legal
16 mechanic. I'm asking you as the person who
17 is --

18 MS. DANDENEAU: John, you said --

19 MR. MORRIS: Stop.

20 MS. DANDENEAU: -- how did you
21 become the treasurer. That is --

22 MR. MORRIS: Please stop.

23 MS. DANDENEAU: That is a legal
24 question.

25 MR. MORRIS: I am not asking any

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2 legal questions, to be clear. I'm asking
3 for this witness' understanding as to how
4 he became the acting treasurer of HCMFA.
5 If he doesn't know, he can say he doesn't
6 know, but this legal stuff is nonsense, and
7 I really object to it.

8 Q. Sir, I'm asking you a very simple
9 question.

10 MS. DANDENEAU: Argumentative.

11 Q. You testified -- you testified that
12 you became the acting treasurer of HCM --
13 HCMFA; correct?

14 A. Yes.

15 Q. How did that happen?

16 MS. DANDENEAU: Again, object to
17 form.

18 MR. MORRIS: I can't wait to do this
19 in a courtroom. Good God.

20 Q. Go ahead, sir.

21 A. I don't know the exact process of
22 how that happened.

23 Q. Do you have any idea whether signing
24 this document was part of the process?

25 MR. MORRIS: You know what --

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2 MS. DANDENEAU: Objection.

3 MR. MORRIS: -- withdrawn. You guys
4 want to do this, I can't wait. I can't
5 wait. This is the craziest stuff ever.

6 MS. DANDENEAU: John, he said he's
7 not a lawyer, and you are asking him for a
8 legal conclusion, and he says he doesn't
9 know, and you persist.

10 MR. MORRIS: Okay.

11 MS. DANDENEAU: So you can ask these
12 questions --

13 MR. MORRIS: Did anyone -- please
14 stop talking.

15 MS. DANDENEAU: -- at another
16 point -- no, no, no, I'm entitled to talk,
17 too; right? If you're going to make these
18 accusations as if we're trying to stonewall
19 you, this is not the witness to ask that
20 question.

21 MR. MORRIS: I can't -- I can't
22 wait -- I can't wait to do this in a
23 courtroom. I will just leave it at that.

24 MS. DANDENEAU: That's right, I'm
25 sure you can't.

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2 Q. Did anyone ever tell you, sir, that
3 even though you were the acting treasurer of
4 HCMFA, that you were not authorized to sign the
5 two promissory notes that we looked at before
6 lunch?

7 A. I'm not sure I understand the
8 question. I wasn't -- I mean, I'm -- I'm the
9 current acting treasurer.

10 Q. Did anybody ever tell you at any
11 time that even though you were the acting
12 treasurer of HCMFA, that you were not
13 authorized to sign the two promissory notes
14 that we looked at before lunch?

15 MS. DANDENEAU: Objection to form.

16 A. Not that I recall.

17 Q. Did anybody ever tell you at any
18 time that you were not authorized to sign the
19 two promissory notes that we looked at before
20 lunch?

21 A. Not that I recall.

22 Q. Did anybody ever tell you at any
23 time that you should not have signed the two
24 promissory notes that we looked at before
25 lunch?

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2 A. Not that I recall.

3 Q. Did you ever tell anybody at any
4 time that you weren't authorized to sign the
5 two promissory notes that we looked at before
6 lunch?

7 A. Not that I recall.

8 Q. Did you ever tell anybody at any
9 time that you made a mistake when you signed
10 the two promissory notes that we looked at
11 before lunch?

12 A. Not that I recall.

13 Q. As you sit here right now, do you
14 have any reason to believe that you were not
15 authorized to sign the two documents that we
16 looked at before lunch?

17 MS. DANDENEAU: Objection to form.

18 A. If -- if this is the -- the valid
19 incumbency certificate, I mean, this does --
20 this does detail who the signers are.

21 Q. Okay. And looking at that document,
22 does that give you comfort that you were
23 authorized to sign the two promissory notes
24 that we looked at before lunch?

25 MS. DEITSCH-PEREZ: Object to the

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2 form.

3 MS. DANDENEAU: Objection, form.

4 A. Yes.

5 Q. As of October 20th -- withdrawn.

6 I'm trying to take your mind back to
7 a year ago, October 2020. Do you recall at
8 that time that the boards of the retail funds
9 were making inquiries about obligations that
10 were owed by the advisors to Highland in
11 connection with their 15(c) review?

12 MS. DANDENEAU: Objection to form.

13 A. I don't -- I don't recall.

14 Q. As of October 2020, you had no
15 reason to believe you weren't authorized to
16 sign the two promissory notes that we just
17 looked at; correct?

18 MS. DANDENEAU: Objection, form.

19 MS. DEITSCH-PEREZ: Objection to
20 form.

21 A. I didn't think about it in October
22 of 2020, but I mean --

23 Q. Did you have any reason to believe
24 at that time that you weren't authorized to
25 sign the two notes that we just looked at?

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2 A. Not that I'm aware, no.

3 Q. Did you have any reason to believe a
4 year ago that you made a mistake when you
5 signed those two notes?

6 A. Not that I'm aware.

7 Q. A year ago you believed that HCMFA
8 owed Highland the unpaid principal amounts that
9 were due under those two notes; correct?

10 A. They're -- they're promissory notes
11 that were -- as you presented, that were --
12 that were executed. Whether they're valid or
13 if there's other reasons, I didn't -- I don't
14 know.

15 Q. I'm not asking you whether they're
16 valid or not. I'm asking you for your state of
17 mind. A year ago you believed that HCMFA
18 was -- was obligated to pay the unpaid
19 principal amount under the two notes that you
20 signed; correct?

21 A. Yeah, I'm -- I'm -- yes.

22 Q. Thank you. Are you aware -- you're
23 aware that -- that in 2017, NexPoint issued a
24 note in favor of Highland in the approximate
25 amount of \$30 million; correct?

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2 A. I'm -- I'm -- I'm generally aware.

3 Q. Okay. And are you generally aware
4 that from time to time, after the note was
5 issued by NexPoint, that moneys were applied to
6 principal and interest that were due under the
7 NexPoint note?

8 A. Yes, I'm generally aware.

9 Q. Okay. And did anybody ever tell you
10 that the payments that were made against the
11 NexPoint notes were made by mistake?

12 A. Yes.

13 Q. And is it the one payment that we
14 talked about earlier today?

15 A. We talked about a lot of things
16 today. What payment are we talking about?

17 Q. Okay. Who told you that any payment
18 made against the NexPoint note was made by
19 mistake?

20 A. D.C. Sauter.

21 Q. When did Mr. Sauter tell you that?

22 A. I don't -- I don't remember
23 specifically.

24 Q. Do you remember what payments --

25 A. Sometime -- sometime this year.

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2 Q. Sometime in 2021?

3 A. Yes.

4 Q. Do you remember what payment he was
5 referring to?

6 A. It was the -- the payment made in
7 January of 2021 or -- yeah, January of -- of
8 this -- January of 2021.

9 Q. Okay. So did anybody ever tell you
10 at any time that any payment that was made
11 against principal --

12 A. And -- and -- and -- hold on, and it
13 may have been other -- again, it may have been
14 that payment or -- or there may have been what
15 he was explaining, a misapplication of prior
16 payments as well.

17 Q. Can you -- can you give me any
18 specificity -- withdrawn.

19 Withdrawn. Can you tell me
20 everything that Mr. Sauter told you about --
21 about errors in relation to payments made
22 against principal and interest due under the
23 NexPoint note?

24 MS. DANDENEAU: Can I just --

25 MR. RUKAVINA: Hold on. Hold on.

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2 I'm going to object here, and I'm going to
3 instruct the witness not to answer
4 depending on the discussion that you had --
5 Mr. Waterhouse, I'm the lawyer for
6 NexPoint, and as everyone here knows, D.C.
7 Sauter is in-house counsel.

8 So if you and Mr. Sauter were having
9 a factual discussion and him preparing his
10 affidavit, et cetera, then go ahead and
11 answer that. But if you were having a
12 discussion as to our legal strategy in this
13 lawsuit, or anything having to do with
14 that, then do not answer that.

15 And if you need to talk to either
16 your counsel or me about that, then we need
17 to have that discussion now.

18 A. Okay. Yeah, I don't -- I don't
19 really know how to make that distinction, so
20 maybe I need to talk to counsel before I
21 answer, or if I can answer.

22 Q. Let me just ask you this question:
23 Did -- did you have any conversation with
24 Mr. Sauter about any payment of principal and
25 interest prior to the time that you left

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2 Highland's employment, or did it happen after
3 you left Highland's employment?

4 A. I don't -- I don't recall if -- I
5 don't recall. I mean, it was sometime in 2021.
6 I don't remember if it was before or after I
7 was let go from Highland.

8 Q. Okay. So -- so nobody told you
9 prior to 2021 that any error or mistake was
10 made in the application of payments against
11 principal and interest due on the NexPoint
12 note. Do I have that right?

13 A. Yeah, I don't -- I don't recall this
14 being in 2020.

15 Q. Okay. And it didn't happen in 2019;
16 correct?

17 A. I don't recall that happened.

18 Q. And it didn't happen in 2018;
19 correct?

20 A. I don't -- I don't recall that
21 happening.

22 Q. And it didn't happen in 2017;
23 correct?

24 A. I don't recall.

25 Q. But -- but you believe the

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2 conversation took place in 2021. You just
3 don't remember if it was before or after you
4 left Highland's employment. Do I have that
5 right?

6 A. It was sometime this year. I
7 don't -- I don't remember.

8 Q. Okay. Did you report this
9 conversation to Mr. Seery at any point?

10 A. I don't believe so.

11 Q. Did you report this conversation to
12 anybody at DSI at any time?

13 A. I don't recall.

14 Q. Do you have -- you don't have a
15 recollection of ever doing that; correct?

16 A. Yeah, that's right. I don't recall
17 doing that.

18 Q. Do you recall telling anybody at
19 Pachulski Stang about the conversation you
20 recall with Mr. Sauter?

21 A. No, I don't -- I don't recall.

22 Q. Did you tell any of the independent
23 board members about your conversation with
24 Mr. Sauter?

25 A. I don't recall.

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2 Q. Did you tell any of the employees at
3 Highland before you left Highland's employment
4 about this call that you had with Mr. Sauter?

5 MS. DANDENEAU: Objection to form.

6 A. No, I don't -- no, I don't recall.

7 Q. NexPoint -- to the best of your
8 knowledge, did NexPoint ever file a proof of
9 claim against Highland to try to recover moneys
10 that were mistakenly paid against the principal
11 and interest due under the note?

12 A. Okay. Hold on. You are saying did
13 NexPoint Advisors file a proof of claim to
14 Highland for errors related to payments under
15 the NexPoint note to Highland?

16 Q. Correct.

17 A. I'm -- I'm -- I'm not -- I'm not
18 aware.

19 Q. Are you aware --

20 A. I'm not the legal person here, I
21 don't know.

22 Q. I'm just asking for your knowledge,
23 sir.

24 A. Yeah, I don't know. I'm not aware.

25 Q. Are you aware of any claim of any

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kind that NexPoint has ever made to try to
recover the amounts that it contends were -- or
that Mr. Sauter contend were mistakenly applied
against principal and interest due under the
NexPoint note?

A. I'm not aware.

MS. DANDENEAU: Objection to form.

Q. Okay. The advisors' agreements with
the retail funds are subject to annual renewal;
correct?

A. Yes.

Q. And do you participate in the
renewal process each year?

A. Yes.

Q. What role do you play in the renewal
process?

A. I'm -- I'm asked by the retail board
to walk-through the advisors financials.

Q. And do you do that in the context of
a board meeting?

A. Yes, it is -- yes, it is typically
done in a board meeting.

Q. And do you recall the time --
does -- does the renewal process happen around